18-471

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~334~~ 471

THE NASHVILLE AND DECATUR RAILROAD COMPANY, APPELLANT,

vs.

JOHN C. ORR.

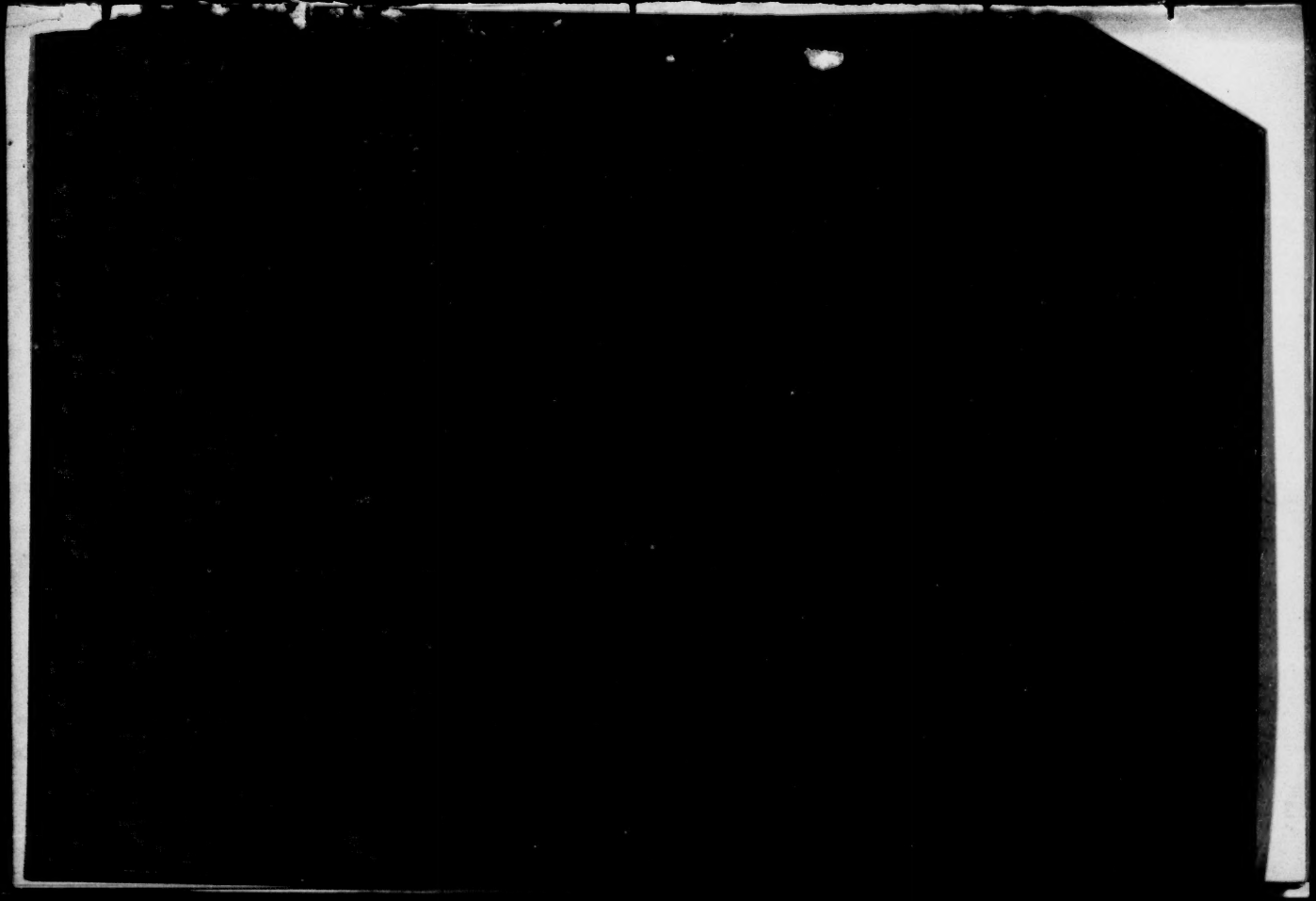
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED JANUARY 19, 1872.

the seizure was made within the waters of New-Jersey, this finding should be regarded sufficient to give the justices jurisdiction. We agree this might have been sufficient, if the act of the Legislature of New-Jersey had so provided. But the jurisdiction conferred upon the justices is confined, in express terms, to seizures within the boundaries of Monmouth County, which the jury have negatived. It is further argued, that the judge erred in instructing the jury that the record of the justices was only *prima facie* evidence of the finding, inasmuch as it was conclusive of the fact of the dredging for clams within the waters of New-Jersey. We do not deem it material to inquire whether or not this record in this collateral suit was conclusive of all the facts therein contained, except those relating to the question of jurisdiction, for the reason that the jurisdictional question we have been considering goes to the root of this action and overrides every other question involved. Even if the judge erred in the instance specified, which we do not admit, it could not have altered the result. The absence of the jurisdiction renders every part of the proceedings before the justices *coram non judice* and void.

Judgment for the plaintiff.

37 Maine, 474
5 Cushing, 351



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1 *Original bill.*

To the Honorable Richard Busteed, judge of the district court of the United States, sitting for the northern district of Alabama:

John C. Orr, a citizen of and residing in the State of Mississippi, suing on behalf of himself, and all other the holders of the bonds of the county of Limestone, in the State of Alabama, secured by the mortgage hereinafter mentioned, who may come in and seek relief by, and contribute to the expenses of this suit, brings this his bill of complaint against the county of Limestone, in the State of Alabama, and the Nashville and Decatur Railroad Company, a corporation created by the laws of the State of Alabama, and located and doing business in the said county of Limestone, in said northern district of Alabama, and thereupon your orator complains and says:

1. That the legislature of the State of Alabama, by an act approved the 19th day of December, 1853, created a body politic and corporate, by the name and style of the "Tennessee and Alabama Central
2 Railroad Company," and by that name such company were declared capable in law and equity of purchasing and leasing, selling and conveying real, personal, and mixed property, so far as should be necessary for the purposes of the incorporation, and by the incorporated name to sue and be sued in any court of law or equity, to have and use a common seal, and the same to change at pleasure, to pass rules and ordinances for the good government of said corporation, and generally to do all things necessary to carry into effect fully and completely the object of this act.

2. By said act the said company were authorized to construct a railway from the town of Montevallo, in the county of Shelby, through Decatur, in Morgan County; thence through Athens, in Limestone County; and thence to some point on the boundary-line between the States of Tennessee & Alabama; thence to connect with a railroad leading through Pulaski to Columbia, Tennessee.

3. Said company were by said act empowered to unite and consolidate into one road all or such parts of such roads with any railroad that might connect with the said Tennessee and Ala-
3 bama Central Railroads at the Tennessee line at the point at which the said Tennessee and Alabama Railroad should touch said Tennessee line: Provided, such union and consolidation was consented to by a majority, in value, of the stockholders in said Tennessee and Alabama Central Railroad Company. A copy of said act of the legislature of the State of Alabama, marked (A B) is herewith filed and prayed to be taken and deemed a part of this bill as fully as if all its provisions were herein specifically recited and averred.

4. Your orator, further complaining, says that, on the 14th day of December, 1855, the legislature of the State of Alabama in general assembly convened, passed an act entitled "An act to authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital stock of the Tennessee and Alabama Central Railroad Company," whereby the defendant, The County of Limestone, "then and now a corporation and municipal division of the State of Alabama, created by and organized under the laws and constitu-
4 tion of the State of Alabama, was authorized and empowered to subscribe for stock in said Tennessee and Alabama Central Railroad Company to the amount of two hundred thousand dollars, and upon the performance of certain conditions in said act set forth, the

court of county commissioners of said county was required to issue and deliver to the president and directors of said Tennessee and Alabama Central Railroad Company the bonds of the said county of Limestone for the sum of two hundred thousand dollars, payable in ten equal annual installments on the first day of March of each year thereafter at the office of the judge of probate of said county, or elsewhere, as said court should deem best. And said court were empowered to make said bonds for any amount they might think proper, not exceeding one thousand dollars, nor less than five hundred dollars, such bonds to be signed by at least a majority of the county commissioners in the presence of the probate judge who was required to certify that
5 fact under his seal of office upon the bonds, and and such bonds were not to bear interest unless, by default of the county, they should not be paid when presented at maturity.

5. The provisions of said act were to apply as fully in the event that portion of said Tennessee and Alabama Central Railroad, which was situated in said county of Limestone, only, should be constructed, as if the entire line of such road were under contract and were to be of full force in the event of an amalgamation of said Tennessee and Alabama Central Railroad Company with other companies as authorized in the act incorporating said company. A copy of said act is herewith filed, marked C D, and prayed to be deemed and taken as part of this bill, as fully as if the provisions thereof were herein specially recited and averred.

6. On the 14th day of February, 1857, the court of county commissioners of said county, in pursuance of said act of the legislature of the State of Alabama last above referred to, having previously sub-
6 scribed for stock in the said Tennessee and Alabama Central Railroad Company to the amount of two hundred thousand dollars, issued and delivered their bonds of that date, payable to the said Tennessee and Alabama Central Railroad Company, its order or transferrees, for the said sum of two hundred thousand dollars; which bonds were signed by the whole number of the court of county commissioners, in the presence of the judge of probate, who, on said bonds, certified that fact; and to said bonds and such certificate the seal of the said court of county commissioners was affixed.

7. Further complaining, your orator says that the legislature of the State of Alabama, in general assembly convened, passed an act, entitled "An act to authorize the sale of the bonds of the county of Limestone," approved February 8, 1858, whereby it was enacted that said bonds of the county of Limestone, issued under the aforesaid act of the legislature of the State of Alabama, passed December 14th,
7 1855, should be transferrable, either by endorsement or delivery; that said Tennessee and Alabama Central Railroad Company should have authority to sell and dispose of such bonds at their market value, or upon such terms and at such discount as to said company should seem proper; that said company should have authority to bind itself for the redemption of said bonds, either by endorsement thereof or in any other way it might deem advisable, or to mortgage any or all of the property of said company, including its track and franchises, for the redemption of the same, and any such contract or contracts should inure to the benefit of the transferree or transferrees, holder or holders of such bonds. A copy of said act, marked "H," is herewith filed, and prayed to be taken as a part of this bill, as fully if the same were here specially recited and averred.

8. On the 29th day of July, 1858, the saidTennessee and Ala-
8 bama Central Railroad Company, by its deed of that date,

granted, bargained, sold, aliened, released, and confirmed unto Jonathan McDonald, James W. Sloss, Booth M. Jones, Henry W. Fennell, James W. Allen, William T. Allen, Thomas Redus, Benjamin M. Grigsby, John C. Orr, your orator, William W. Phillips, Luke Pryor, Robert C. Brickell, Andrew C. Legg, John J. Howard, their heirs and assigns, administrators, executors, and transferrees forever, all that tract and parcel of land comprising the road of said company, with all hereditaments and appurtenances thereunto belonging, fixtures attached, then existing, or thereafter acquired, all the iron, whether of rails, chairs, or spikes, *all* of all kinds and amounts, all of its structures of every kind, its depots, and the land upon which the same are built, and all and every part and parcel of the same, and everything thereunto attached; locomotives, cars, and rolling-stock of every
9 kind; subscription, stock-books, notes, bonds, and choses in action, due and owing said company, and all the estate, right, title, interest, property, possessions, claims, and demands of said company, whether real, personal, or mixed, in law or equity, and all its chartered rights, powers, or privileges, and franchises.

The consideration of said deed is therein expressed and recited as follows, viz, that said company had sold and assigned to the grantees and mortgagees in said deed named bonds of the county of Limestone, issued and delivered to said company, and payable to said company to the amount and of the description following, viz, to the said Jonathan McDavid bonds to the amount of fifteen thousand dollars.

Three thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said James W. Sloss bonds to the amount of five thousand dollars.

One thousand dollars due March 1, 1863
" " " " " 1864

10

" " " " " 1865
" " " " " 1866
" " " " " 1867

To Booth M. Jones, bonds to the amount of five thousand dollars.

One thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said Henry W. Fennell, bonds to the amount of ten thousand dollars.

Two thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said James W. Allen, bonds to the amount of five thousand dollars.

One thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said William T. Allen, bonds to the amount of five thousand dollars.

One thousand dollars due March 1, 1863
" " " " " 1864

11

" " " " " 1865
" " " " " 1866
" " " " " 1867

To said Thomas Redus, bonds to the amount of ten thousand dollars.

Two thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said Benjamin M. Grigsby, bonds to the amount of ten thousand dollars.

Two thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said Jno. C. Orr, your orator, bonds to the amount of ten thousand dollars.

Two thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865
" " " " " 1866
" " " " " 1867

To said W'm W. Phillips, bonds to the amount of five thousand dollars.

One thousand dollars due March 1, 1863
" " " " " 1864
" " " " " 1865

12

" " " " " 1866
" " " " " 1867

To said Luke Pryor, bonds to the amount of five thousand dollars.

One thousand dollars	due	March 1,	1863
" " "	"	"	1864
Do.	do.		1865
Do.	do.		1866
Do.	do.		1867

To said Rob't C. Brickell, bonds to the amount of five thousand dollars.

One thousand dollars	due	March 1,	1863
Do.	do.		1864
Do.	do.		1865
Do.	do.		1866
Do.	do.		1867

To said Andrew C. Legg, bonds to the amount of ten thousand dollars.

Two thousand dollars	due	March 1,	1863
Do.	do.		1864
Do.	do.		1865
Do.	do.		1866
Do.	do.		1867

To said John J. Houard, bonds to the amount of twenty thousand dollars due March 1, 1862. By said deed it is recited that said bonds
13 were purchased by the said grantees and mortgagees on the promise and agreement of said Tennessee and Alabama Central Railroad Company that the payment of said bonds should be secured by the guaranty of said company, and by a lien or mortgage on the entire assets of said company, including its right of way, road-bed, iron, depots, rolling-stock, subscription, and all and everything belonging thereunto—therefore said deed was made. Said deed is subject to the following conditions therein expressed, viz: That if the said county of Limestone should pay off and discharge said bonds as they matured, when presented for payment, so that no default should occur in the payment thereof, then said deed was to be void and of no effect.

But if said county of Limestone should fail and refuse to pay said bonds, or any of them, on presentation at maturity, to the proper holders, then and in that case the holder or holders of any or all such bonds were authorized and empowered to take all necessary steps to
14 foreclose the said mortgage; and said mortgage was declared to be a lien for the full amount of the face or principal of said bonds and all interest which should accrue thereon, in consequence of the failure or refusal of said county to pay said bonds at maturity.

And by said deed it is further provided that, in the event said county should find it necessary, or should think it proper, to sell or negotiate other bonds of said county held by it, as follows, viz, twenty thousand dollars, due March 1, 1860; twenty thousand dollars due March 1, 1861; one thousand dollars, due March 1, 1863;

Do	do	1864;
Do	do	1865;
Do	do	1866;
Do	do	1867;

that said bonds, when sold or mortgaged, should share in the security

of said mortgage. A copy of said mortgage, marked (C A) is herewith filed and prayed to be taken as part of this bill. Which said mortgage was, on the 22d of September, 1868, duly recorded in the office
15 of the judge of probate of the county of Limestone, State of Alabama.

9. Of said bonds so issued by said county of Limestone, and sold and assigned by said Tennessee and Alabama Central Railroad Company, and payment whereof is secured by said mortgage, your orator is now the owner and holder of seven thereof, viz, No. 104, for the payment of one thousand dollars, on March 1, 1864; 105, for the payment of one thousand dollars on the 1st of March, 1864; No. 110, for the payment of one thousand dollars on the 1st of March, 1865; No. 111, for the payment of one thousand dollars on the 1st of March, 1865; No. 129, for the payment of one thousand dollars on the 1st of March, 1866; No. 130, for the payment of one thousand dollars on the 1st of March, 1866; No. 138, for the payment of one thousand dollars on the 1st of March, 1867, which is credited, of date April 1, 1867, with a payment of five hundred dollars.

10. Your orator, further complaining, says that said Tennessee
16 and Alabama Central Railroad Company, after the sale and transfer of said bonds and the execution of said mortgage, constructed a railway from a point on the Memphis & Charleston Railroad *Company*, near the town of Decatur, to the boundary-line between the States of Alabama and Tennessee; that when said bonds were sold and transferred and said mortgage executed, the said company was engaged in constructing said railway.

The company never constructed any other part of the railroad contemplated in the act of the legislature of the State of Alabama, hereinbefore exhibited and marked Exhibit A B.

That said rail*r*ay, so constructed, is situated entirely in the county of Limestone, State of Alabama, within this judicial district; that at the boundary-line of the States of Alabama and Tennessee it formed a junction with a railway constructed in the State of Tennessee, and under the authority thereof, known as the Tennessee and Alabama Central Railroad, and the Central Southern Railroad.

17 11. Your orator, further complaining, says that said Tennessee and Alabama Central Railroad Company acquired and owned the right of way whereon the said railway was constructed by them; that they held and owned many locomotives, passenger and freight cars, and other rolling-stock, all of which were conveyed by said mortgage, the number and description whereof *is* unknown to your orator.

12. On the 21st of November, 1866, a consolidation of the said railways, known as the Tennessee and Alabama Railroad, the Central Southern Railroad, and the Tennessee and Alabama Central Railroad, was had and effected, and thereby the said several railways and the companies or corporations constructing and owning them became united into one company, known and styled as the Nashville & Decatur Railroad Company, which is the defendant to this bill of that name and style.

The legislature of the State of Alabama, in general assembly convened, passed an act entitled "An act to change the name of
18 the Tennessee & Alabama Central Railroad Company," approved February 19, 1867, wherein such consolidation is recited, and confirmed and declared valid, and the name of the Alabama and Central Railroad Company changed to the name and style of the "Nashville and Decatur Railroad Company."

A copy of said act, marked "K," is herewith filed and prayed to be taken and deemed as part of this bill; and, on the 8th of March, 1867, the legislature of the State of Tennessee, in general assembly convened, passed an act entitled "An act for the benefit of the Nashville & Decatur Railroad Company, and for other purposes, wherein the said consolidation of said railways is confirmed. A copy of said act, marked "M," is prayed to be taken and deemed a part of this bill.

By such consolidation the Nashville and Decatur Railroad Company has become possessed of the entire property, rights of property, and franchises of said Tennessee and Alabama Central Railroad Company
19 in and by said mortgage conveyed, and are now using, enjoying, and exercising the same, and thereby the corporate existence of said Tennessee and Alabama Central Railroad has become merged in that of the Nashville and Decatur Railroad Company.

13. On the day of , 1866, your orator presented the said bonds of the county of Limestone, held and owned by him, at the office of the judge of probate of said county for payment, and then and there demanded payment of the same of the judge of probate and tax collector of said county, which was refused.

14. Said bonds, owned and held by your orator, have been presented to the commissioners' court of said county, and payment thereof demanded, which has been refused. Said court has also been prayed to levy and collect a tax for the payment of said bonds, which has been refused.

15. The bonds mentioned in said mortgage as falling due March 1st, 1860, and March 1st, 1861, with those falling due March 1st, 1862, have been fully payed. Whether any other of the bonds in said mortgage
20 mentioned as not having been sold or negotiated by said Tennessee and Alabama Central Railroad Company, were subsequently sold or negotiated, your orator does not know and cannot state.

The bonds of said county of Limestone, hereinbefore mentioned as held and owned by your orator, are wholly unpaid.

16. Further complaining, your orator says that, since the consolidation of said Tennessee and Alabama Central Railroad Company with the said corporations, chartered by the legislature of the State of Tennessee, and know' as the Central Southern Railroad and the Tennessee and Alabama Railroad, the defendant, the Nashville and Decatur Railroad Company, have taken exclusive possession of all the property, real and personal, conveyed by the mortgage aforesaid, and now have possession thereof; that the said defendant, since said consolidation, have been exercising and are now exercising all the rights, privileges,
21 and franchises of the said Tennessee and Alabama Central Railroad Company, and are claiming to be the absolute and exclusive owners, as your orator is informed and believes, and on such information and belief avers the fact to be that thereof. The debts of the said Central Southern Railroad, and of the Tennessee and Alabama Railroad, were at the time of such consolidation, and are now, very large, the exact amount' whereof are unknown to your orator, but they were equal to the actual value of all the property, real and personal, and all the corporate rights and franchises of the said corporations, the Central Southern Railroad, and the Tennessee and Alabama Railroad, and by the said consolidation the property, real and personal, of said Tennessee and Alabama Central Railroad Company, conveyed by said mortgage, has become liable for the payment of the debts of said Central Southern Railroad, and Tennessee and Alabama Railroad, and

the corporate rights and franchises of said Tennessee and Ala
22 bama Central Railroad Company, by said mortgage conveyed, have become vested in, and are claimed by, the defendant, the Nashville and Decatur Railroad Company. By means of such consolidation the rights and interests of your orator, and the other holders of the bonds of said county of Limestone, are greatly endangered.

17. Although said defendant, the Nashville and Decatur Railroad Company, is fully aware of the said mortgage, and well know' that the said bonds held and owned by your orator are wholly unpaid, and although the fact is that the bonds of said county of Limestone, secured by said mortgage, now outstanding and unpaid, exceed, in the aggregate of principal interest, seventy-five thousand dollars, and of this fact the defendant is fully aware, yet said defendant does not pay said bonds, or any part thereof, and avers its inability to do so.

18. And your orator further avers that by the consolidation afore-
23 said of said several railroad companies, the defendant, the said Nashville and Decatur Railroad Company, having taken possession as aforesaid of the locomotives, cars, and other rolling-stock of said Tennessee and Alabama Central Railroad Company, by said mortgage conveyed, have so mingled and confused the same with the rolling-stock of the other companies, the Tennessee and Alabama Railroad, and the Central Southern Railroad, that the identity of the locomotives, cars, and rolling-stock mortgaged as aforesaid is lost. In consideration of the premises, and inasmuch as your orator is remediless by the strict rules of the common law, your orator prays that said county of Limestone, and said Nashville and Decatur Railroad Company, may be made parties defendant to this bill, and for this purpose that subpœnas and all other needful process may issue directed to them, and they required to answer, all and singular, the allegations herein contained, as fully as if they were here repeated, and they especially interrogated thereto.

24 To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogations hereinafter numbered and set forth, as by note hereunder written, they are respectively required to answer, that is to say:

1. Whether by an act of the legislature of the State of Alabama, approved December 19, 1853, "the Tennessee and Alabama Central Railroad Company" was, or not, created a body polotic and corporate, and by that name rendered capable of suing and being sued.

2. Whether by said act the corporate powers and franchises herein stated were conferred, or not, on said corporation, the Tennessee and Alabama Central Railroad Company.

3. Whether the legislature of the State of Alabama passed an
25 act on the 14th day of December, 1855, entitled an act to authorize the commissioners' court of Limestone County, State of Alabama to subscribe for the capital stock of the Tennessee and Alabama Central Railroad Company.

4. Whether the provisions of said act are correctly recited and stated herein. If not, in what does the variance or omission consist.

5. Whether, pursuant to the provisions of said act, the defendant, the county of Limestone, did not subscribe to the capitol stock of said Tennessee and Alabama Central Railroad Company, two hundred thousand dollars.

6. Whether, in payment of such subscription, said county of Limestone did not make and issue its bonds as herein alleged.

7. Whether the legislature of the State of Alabama did not pass an act entitled "An act to authorize the sale of the bonds of the county of Limestone," approved February 8, 1858. Whether the provisions of said act are not herein correctly recited and stated. If not,
26 wherein does the variance or omission consist.

8. Whether said Tennessee and Alabama Central Railroad Company did not, on the 29th of July, 1858, execute & deliver the mortgage herein described, to secure the payment of the said bonds of the county of Limestone.

9. Whether Exhibit "C A" to this bill is or not a correct copy of said mortgage. If not, wherein does it vary from the original of said mortgage.

10. Where is the original of said mortgage? In whose custody & keeping is it?

11. Whether said mortgage was or not recorded, as herein alleged.

12. Whether orator is not the owner and holder of the seven bonds of the county of Limestone, herein described.

13. Whether said bonds were or not presented at the office of the judge of probate of said county of Limestone, as herein alleged, and payment thereof demanded and refused.

27 14. Whether the consolidation of said Tennessee and Alabama Central Railroad Company with the companies or corporations herein named was not had and effected as herein alleged.

15. Whether, by such consolidation, the corporate existence of the said "Tennessee & Alabama Central Railroad Company" did not become merged in that of the "Nashville & Decatur Railroad Company."

16. Whether said "Nashville & Decatur Railroad Company" is not now, and has not been since, in the exclusive possession of all the property, real & personal, and all the franchises by said mortgage conveyed by said Tennessee and Alabama Central Railroad Company to secure the payment of said bonds.

17. Whether, since said consolidation, said Nashville & Decatur Railroad Company have not held and are not now holding all said property, real & personal, as the sole and exclusive owner
28
29 thereof, taking the rents & profits thereof for their own use.

18. Whether, since said consolidation, said Nashville & Decatur Railroad Company have not been exercising, and are not now exercising the corporate privileges & franchises of said Tennessee & Alabama Central Railroad Company by said mortgage conveyed for the security of said bonds.

19. Whether the bonds of the said county of Limestone, held & owned by your orator, are not unpaid.

20. Whether, by such consolidation, the property, real and personal, mortgaged as aforesaid by said Tennessee and Alabama Central Railroad Company, has not become liable for the debts of said Central Southern Railroad Company, and said Tennessee & Alabama Railroad Company. Let the amount of such indebtedness be stated, & the value of the property, real & personal, of said companies, be stated,
30 not including, but excluding the value *the value* of the property, real & personal, of said Tennessee & Alabama Central Railroad Company, mortgaged as aforesaid.

Your orator further prays that an account may be taken, under the direction and decree of this court, of the amount due and owing to

your orator, principal & interest, of the bonds aforesaid of said county of Limestone, held & owned by him.

That said Nashville & Decatur Railroad Company may be decreed to pay your orator the sum found to be due him on the taking of such account.

That said Nashville & Decatur Railroad Company may be compelled to discover & set forth a true & accurate statement of all & singular the property and rights of property of said Tennessee & Alabama Central Railroad Company, embraced in said mortgage, now in the
31 possession of said Nashville & Decatur Railroad Company, including therein the depots, locomotives, freight & passenger cars, rolling-stock, iron, whether of rails, chains, or spikes, track or roadbed. That in default of payment, by said Nashville & Decatur Railroad Company, of the amounts found due on the account herein prayed, to your orator, said mortgage may be foreclosed, and said Nashville & Decatur Railroad Company forever barred from all right & equity of redemption in & to said mortgaged property. That such mortgaged property may, under a decree of this court, be sold, & the proceeds of sale applied to the satisfaction of the said bonds of the county of Limestone, payment whereof is by said mortgage secured.

That a receiver be appointed to take charge of & hold the said mortgaged property during the pendency of this suit, and for such
32 other & further relief as to your honor may seem meet, and the case may require.

WALKER & BRICKELL,
Sol's for Complainant.

The defendants are required to answer the several statements of this bill, from No. 1 to 18, inclusive, and the several interrogatories, from 1 to No. 20, inclusive.

WALKER BRICKELL,
Sol's for Compl't.

Dist. court, northern district of Alabama.

U. S. OF AMERICA:

Before me, Lionel W. Day, clerk of the district court of the United States for northern dist't of Alabama, personally appeared the complainant, John C. Orr, who, being duly sworn, deposeth and saith that the facts stated in the foregoing bill are true, so far as stated on his own knowledge, and of the facts stated on information and belief he has information, and believes them true.

JOHN C. ORR.

Sworn to & subscribed.
May 19th, 1870.

LIONEL W. DAY,
Clk D. C.

33 (Endorsed:) Original bill filed in clerk's office this 16th day of May, 1870.

LIONEL W. DAY,
Clerk D. C.

34 "EXHIBIT A B."

An act to incorporate the Tennessee & Alabama Central Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That James W. Sloss, Thomas A. Nelson, Boswell Hine, John R. Mason, James F. Sorrell, John R. Harris, W. W. Phillips, Robert B. Peebles, M. C. Smith, W'm D. Hayes, M. Sydney Harris, J. N. S. Jones, Thomas Redus, Jonathan McDonald, John T. Tanner, B. W. Townsend, William Maillor, John D. Rather, A. A. Burleson, R. N. Walden, Henry Fennell, R. C. Mason, James Hendricks, and George D. Shortridge, their associates and successors, with such other persons as shall associate with them for that purpose, are hereby appointed, constituted, and declared a body politic and corporate, by the name of the Tennessee & Alabama Central Railroad Company, and by that name shall be capable, in law, of purchasing, holding, or leasing, selling, and conveying real, personal, and mixed property, so far as shall be necessary for the purposes of this incorporation; and, by said incorporated name, may sue and be sued, plead and be impleaded, answer and be answered unto, in any court of law or equity of this State, or elsewhere, and to have and use a common seal, and the same to break, alter, or amend at pleasure; to pass such rules and ordinances for the good government of said corporation as to them may seem proper, and generally to do all things necessary to carry
35 into effect fully and completely the object of this act.

SEC. 2. *Be it further enacted*, That any five of said corporators may act and do all things necessary to be done preparatory to a meeting of the stockholders in the Tennessee & Alabama Central Railroad Company, and they shall open books of subscription for the capital stock of said company at such time and place, and with such notice, not less than thirty days, as they may think proper.

SEC. 3. *Be it further enacted*, That, as soon as one hundred thousand dollars shall have been raised, either by subscription, loan, or otherwise, to or by said company, said railroad company shall have authority hereby to put under contract for construction any or all portions of said road that they may think proper.

SEC. 4. *Be it further enacted*, That the capital stock of said railroad company may be one and a half million' of dollars, in shares of twenty-five dollars each, with the privilege of increasing said stock to three million' of dollars, should said increase be found necessary for its construction and future management.

SEC. 5. *Be it further enacted*, That the said railroad shall extend from the town of Montevallo, in Shelby County, in a northeasterly direction, through Decatur, in Morgan County, and across the Tennessee River at that point; thence through Athens, in Limestone County, and from thence to some point on the boundary-line between the
36 States of Alabama and Tennessee; thence to connect with a railroad leading through Pulaski to Columbia, Tennessee; and that said company shall have the privilege of crossing the Tennessee River, either by junction, under contract, with the Memphis & Charleston Railroad Company, for which authority is hereby given, or by the construction of a separate bridge for that purpose, or by any other means that may be necessary to effect a crossing of said river.

SEC. 6. *Be it further enacted*, That, as soon as one hundred thousand dollars shall have been raised, the corporators hereby appointed shall

call a meeting of the stockholders at such time and place as they may appoint. At such meeting said stockholders, or a majority of them in value, shall elect nine directors, by ballot, to manage the affairs of said company; and the corporators aforesaid, or any three or more of them, shall be judges of said first election. The directors then chosen shall elect among themselves a president of said company, and allow him such compensation as they may think proper; and on all occasions whenever a vote of stockholders shall be necessary to be taken, each stockholder shall be allowed one vote for every share owned by him or her, and any stockholder may depute any other person to vote or act for him or her as his or her proxy.

SEC. 7. *Be it further enacted*, That the president and directors
37 of said company shall be chosen annually by the stockholders of said company; and if any vacancy shall occur by death, resignation, or otherwise, of any president or director, or directors, before the year for which they have been elected shall have expired, such vacancy shall be filled by the president and directors, or a majority of them; and that the president and directors shall hold their offices until their successors are chosen and qualified; shall have power to call meetings of stockholders at any time, and a majority of them shall have power to remove the president or any director, and to fill vacancies occasioned by removal at pleasure.

SEC. 8. *Be it further enacted*, That the said president and directors, or a majority of them, may appoint all such officers, engineers, agents, or servants whatsoever as they may deem necessary to carry on the business of said company, and dismiss them at pleasure; and a majority of them shall determine the compensation of all officers, engineers, and servants of said company; shall have power to adopt all rules or regulations deemed necessary and proper for exercising all the powers vested in this company for carrying into effect the object of this act; and said president and directors, or a majority of them, are empowered to borrow money to carry into effect the object of this act; to issue certificates or other evidences of such loan, and to pledge the property of said company for the payment of the same, with interest.

38 SEC. 9. *Be it further enacted*, That the said president and directors shall have power to require the stockholders of said company to pay such installments on their respective shares of stock in said company and at such times as they may think best for the interest of said company: *Provided, however*, That thirty days' notice be given, and no call shall be made for more than eight per cent. upon each share; and upon the failure or refusal of any stockholder to pay the instalment on his or their stock, in pursuance of any call made by said president and directors as aforesaid, said president and directors may, upon giving thirty days' notice, proceed to sell, at public sale, the share or shares of said stock owned by such stockholder, or such part as they may think proper, to the highest bidder; and if, upon the sale of said shares of stock owned by said defaulting stockholder, said share should be sold for less than the amount due upon the instalment above mentioned, said stockholder shall be liable to pay the said company the defi'ency in manner and form hereinafter specified.

SEC. 10. *Be it further enacted*, That, upon the failure or refusal of any stockholder to pay any instalment called for or demanded by the president and directors of said company, or if, upon the sale of said shares, as before specified, they shall be sold for less than the amount due on instalment as above mentioned, the president and directors, upon

giving thirty days' notice to said defaulting stockholder, may proceed by their attorney to move the circuit court of the county in which said stockholder may reside for judgment against said stockholder for the amount called for by the president and directors of said company, or as the case may be, for any deficiency that may occur in the sale of said stock as above specified. And said court is hereby authorized and empowered and required to render judgment against said defaulting stockholder at the term of the court at which said motion is made, which judgment so given shall be a lien on the real and personal property of said stockholder, and execution may issue as upon other judgments and costs; and all notices hereby required to be given to any defaulting stockholder shall be issued by and in the name of the secretary of the board of directors, and served by the sheriff of the county in which the stockholder may reside, and shall be returned to the office of the clerk of the courts as in cases of common writs, with the same penalties; and the sheriff shall be entitled to one dollar for serving said notice, which, with all the costs that may accrue on said proceedings, shall be paid by the party against whom judgment may be rendered.

SEC. 11. *Be it further enacted*, That the president and directors of said company are hereby authorized to contract for and receive conveyances of land for the track of said road, not to exceed one hundred & fifty feet wide; also for depots, stations, side-tracks, turn-outs, single and double or treble tracts, &c., and of stone, timber, wood, gravel, and earth, which may be necessary or required in the construction of said road; and when the owner and company cannot agree upon the price, or when the owner is an infant, non-resident, or non compos mentis, then it shall be lawful for the president and directors of said company to apply to the sheriff of said county in which said lands or other property may be situated, who shall summon a jury of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages and return their award or judgment to the next term of the circuit court for the county in which said land or other property may be situated, which shall be entered by the clerk as the judgment of the court, and execution may issue thereupon for the amount of said judgment and costs: *Provided always*, That if either party shall, upon the return thereof, be dissatisfied, they may, upon filing bond, with good & sufficient security, in such sum as the court may order, be allowed an appeal to the next term of the circuit court, where said cause shall stand for trial de novo: *Provided, also*, That thirty days' notice shall be given to the opposite party, served by the sheriff of the county.

SEC. 12. *Be it further enacted*, That the jurors trying said case shall take the following oath, which the sheriff is authorized to administer: "You and each of you do swear (or affirm as the case may be) that you will well and truly try the case now pending and submitted to your decision, between A B, complainant, and the president and directors of the Tennessee and Alabama Central Railroad Company, defendants, and that you will render such compensation to the complainant as to you shall seem just and proper in the premises."

SEC. 13. *Be it further enacted*, That the said lands or other property, when so condemned or estimated as aforesaid, shall enure to and become the property of said company forever, upon the payment by the said company of the amount assessed by said jury to the party claiming damages on account of the construction of said road through said lands, or for such other property: *Provided*, That the work on the said road shall in nowise be delayed on account of the proceedings had as aforesaid.

SEC. 14. *Be it further enacted*, That in case any person or persons shall wilfully injure or obstruct in any degree the said road, or injure any of the property connected with its construction or use, he or they shall forfeit and pay to the president and directors of said company three times the amount of all damages they may sustain in consequence thereof, to be sued for and recovered in the same manner as provided by law for individuals in like cases; and on complaint to any
42 magistrate within whose jurisdiction such offence shall be committed, it shall be the duty of such magistrate to bind the persons so offending with sufficient security for his or their good behavior for a period not less than one year, and such offender shall also be subject to indictment, and shall be sentenced at the discretion of the court, to be imprisoned not less than three nor more than six months.

SEC. 15. *Be it further enacted*, That in the construction of said railroad the president and directors of said company shall not in any way or manner obstruct any public road now established, but shall provide convenient passages to travel over said road.

SEC. 16. *Be it further enacted*. That the president and directors of said company may cause any road or way to be changed or altered in such manner that said road may be made on the best site of ground for that purpose: *Provided*, That said company shall put such road or way in as good condition as at the time of altering or changing the same.

SEC. 17. *Be it further enacted*, That the president and directors of said company, for the purpose of making said railroad or repairing or changing it afterwards, shall have the same right of entry of adjacent lands, and to cut, quarry, dig, take, and carry away any stone, wood, gravel, or other material which may be necessary as is before provided as to the right of way: *Provided, however*, In all cases said com-
43 pany shall make compensation to the owners as is agreed on, in the manner hereinbefore provided for.

SEC. 18. *Be it further enacted*, That whenever, in the construction of said railroad, it may be necessary to cross any established railroad or way, authority is hereby given to cross the same; but it shall be the duty of said company so to construct their railroad as not to impede the passage of such established road or way, and if it be erected for said railroad over any navigable water-course, the same shall be made so as not to obstruct the navigation of such water-course.

SEC. 19. *Be it further enacted*, That payment on the subscription to the stock in said company may be made in the materials, labor, provisions, and all and everything necessary for the construction of said road which the board of directors at their discretion may deem expedient to accept.

SEC. 20. *Be it further enacted*, That after the completion of said road, or any thereof, the said president and directors may levy and collect tolls from all persons, property, merchandise and other commodity transported thereon: *Provided*, The nett profits of said road shall never exceed twenty-five per cent. per annum.

SEC. 21. *Be it further enacted*, That said company shall have the right, under the same rules, regulations, and restrictions, and with the like privileges and immunities as herein granted to the main road, to extend for the purpose of uniting with other roads, as well as to
44 build and construct branch railroads not more than five miles in length, on either side of said main road, in any of the counties near the main road, and shall have authority to form junctions with other roads, and to erect and maintain toll-houses and other buildings

for the accommodation of their business as they may deem suitable for their interests.

SEC. 22. *Be it further enacted*, That the said railroad company shall have the power to unite and consolidate into one road all or such part of the said road with any railroad that may connect with the said Tennessee & Alabama Central Railroad, at the Tennessee line, at the point at which the said Tennessee & Alabama Railroad may touch said Tennessee line: *Provided, however*, Said union or consolidation shall not be made or effected until a majority of the stockholders in value in said Tennessee and Alabama Central Railroad shall consent to the same.

SEC. 23. *Be it further enacted*, That in the event the said railroad company fail to obtain capital or means, by subscription or otherwise, to the extent mentioned in this charter, under section three, within the period of twelve months, then, and in that event, it shall be lawful, and authority is hereby given and declared by the passage of this act, for the stockholders of said railroad company to exercise all the rights and privileges under this charter so as to construct and complete that
45 portion of said line of road extending from the town of Decatur, in the county of Morgan, on the Tennessee River, through the town of Athens, in Limestone County, to the boundary-line between the States of Tennessee & Alabama, so as to meet and connect with a railroad now contemplated in the State of Tennessee, to run through the town of Pulaski, in Giles County, to the town of Columbia, when the sum of one hundred and fifty thousand dollars shall have been raised by subscription, or otherwise: *Provided, however*, That the stock or means raised by subscription, or otherwise, in the counties of Morgan and Limestone, shall be first applied to the construction and completion of that part of the line of said railroad extending from the town of Decatur, on the Tennessee River, through the town of Athens, in Limestone County, to the State line, at the point to intersect the contemplated railroad in the State of Tennessee: *And provided further*, That should said railroad company determine, under this provision, to construct and complete only that portion of said line of railroad extending from Decatur through Athens to the Tennessee line, then, and in that event, said railroad company may, under this charter, and in the manner mentioned in section six, by a meeting of the stockholders, reduce the number of directors from nine to five; and authority is hereby given to increase or lessen the number of directors from time to time, as the stockholders may deem necessary and proper for the good manage-
46 ment of said portion of said line of railroad.

SEC. 24. *Be it further enacted*, That the said company hereby incorporated shall commence building said road, and shall let out to contract for grading and cross-ties *for* at least twenty miles thereof within two years from the passage of this act.

SEC. 25. *And be it further enacted*, That nothing in this act contained shall be so construed as to prevent other railroad companies, now or hereafter to be incorporated, from crossing said Tennessee and Alabama Central Railroad, and other railroads now or hereafter to be incorporated, shall have the right to connect or intersect with the Tennessee & Alabama Central Railroad Company upon the terms and conditions usual in the comity of railroad companies; and said company shall have no right to discriminate against roads so crossing or connecting.

Approved December 19, 1853.

(Endorsed:) "Exhibit A B." Filed May 16th, 1870. Lionel W. Day, clerk D. C.

47 EXHIBIT C D.

An act to authorize the court of county commissioners of Limestone County, Alabama, to subscribe to the capital stock of the Tennessee & Alabama Central Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That in pursuance of the wishes of the people of Limestone County, as expressed at an election held for that purpose, on the first Monday in May, 1854, and also re-affirmed at the recent election for representatives in the general assembly, held on the first Monday in August, 1855, *that* the court of county commissioners for said county of Limestone be, and they are hereby, authorized, empowered, and required, for and in behalf of said county, to subscribe for stock in the Tennessee & Alabama Central Railroad Company, to the amount of two hundred thousand dollars, to be raised in the manner and on the condition hereinafter mentioned.

SEC. 2. *Be it further enacted*, That the manner of making said subscription shall be as follows: Whenever said company or corporators, through their proper officials, shall apply, as provided in section 2nd of the act incorporating the same, approved December 19, 1853, for the subscription in this act mentioned, the judge of probate of said county sitting as president of said court*y* of county commissioners, shall write the name of the said county on the subscription list for the sum of two hundred thousand dollars, and shall thereto subscribe his name, and affix his seal of office, and thereupon the rights of said company
48 and the obligations on said county shall fully attach upon the conditions aforesaid.

SEC. 3. *Be it further enacted*, That as soon as the conditions set forth in the succeeding sections of this act are fully complied with, it shall be the duty of the court of county commissioners of Limestone County to take the steps hereinafter prescribed, and all the necessary and proper steps for the purpose of raising annually the sum of twenty thousand dollars, until the sum of two hundred thousand dollars shall be raised, to be applied to the construction of that portion of the Tennessee & Alabama Central Railroad which shall be in Limestone County, to wit: From some point at or near Decatur, to the northern line of said county, where it shall be intersected by a railroad to be constructed thence in the direction of Pulaski and Columbia, Tennessee, styled the Central Southern Railroad, and on no account shall the funds raised by virtue of this act, or any part of them, be otherwise appropriated.

SEC. 4. *Be it further enacted*, That no assessment or levy of taxes shall be made by virtue of this act, until (I) an amount of good and solvent subscriptions shall be made to the capital stock of said company, which, including the two hundred thousand dollars raised by virtue of this act, shall be sufficient, according to the estimate of a com-
49 petent engineer, based upon an accurate and thorough survey of said route, to construct a railroad track across the county of Limestone as hereinbefore specified, nor until (II) the grading of the Central Southern Railroad of the State of Tennessee is let to contract, or the court of county commissioners of Limestone County are satisfied from other reasons that the Central Southern Railroad will be constructed, nor until (III) the president of said Tennessee & Alabama Central Railroad Company shall have made affidavit before the probate judge of Limestone County that the bonds or money to be received *to be received* by him under the provisions of this act, shall be solely and faithfully

applied to the construction of said road, within the limits of Limestone County, and the private property of the president who first makes the affidavit shall be liable to the county of Limestone for the misapplication of said bonds or money made during his term of office, and his successors in office shall each, for his own misapplication, be similarly liable.

SEC. 5. *Be it further enacted*, That as soon as the three preceeding conditions are complied with, and annually thereafter, for a period of ten years, it shall be the duty of said court of county commissioners to assess such a percentum tax on the State tax of that year and each succeeding year, for the period above mentioned, as shall raise the
50 sum of twenty thousand dollars annually, and the same shall be collected in the same manner as the State and county taxes are collected.

SEC. 6. *Be it further enacted*, That the tax collector, for his services under this act, shall be allowed a reasonable compensation, to be determined by the court of county commissioners; and before he begins to collect said railroad tax, he shall execute to the said court his penal bond, in the sum of forty thousand dollars, with good and sufficient securities, to be approved by said court, for the faithful performance of his duties in collecting and paying over as hereinafter directed the said amount so assessed.

SEC. 7. *Be it further enacted*, That in case of the death or neglect of duty of the tax collector, or his malappropriation of the funds above mentioned, the same provisions, penalties, and summary proceedings as specified in sections 492, 493, 494, 2628, and 2632, of the code of Alabama, and all other provisions now in force against collectors of the State and county taxes, shall fully apply to the collector of this *act*.

SEC. 8. *Be it further enacted*, That as soon as the conditions set forth in section 4 of this act are complied with, it shall be the duty of the court of county commissioners of said county to issue and deliver to the president and directors of the Tennessee & Alabama Central Railroad Company county bonds for the sum of two hundred thousand
51 dollars, payable in ten annual equal instalments, on the first day of March of each year thereafter, at the office of the probate judge of said county or elsewhere, as the said court may deem best; and the said court shall have authority to make said bonds for any amount they may think proper, not exceeding one thousand dollars, nor less than five hundred dollars: *Provided, however*, That the aggregate amount of bonds payable in any year shall not, except on the contingency mentioned in the succeeding section of this act, exceed nor fall under the sum of twenty thousand dollars; the said bonds shall be signed by at least a majority of the court of *the* county commissioners, and in the presence of the probate judge, who shall certify that fact under his seal of office upon the bond; and the said bonds shall bear no interest, unless by default of the county they shall not be paid when presented at maturity.

SEC. 9. *Be it further enacted*, That the court of county commissioners aforesaid shall endeavor to make such an assessment each year as shall raise the exact sum of twenty thousand dollars; but in case the amount assessed and collected shall be either more or less than that sum, the amount to be assessed the next year shall be increased or diminished by the deficit or excess of the preceeding year.

SEC. 10. *Be it further enacted*, That it shall be the duty of the
52 tax collector, with the funds raised under the provisions of this

act, to pay off and take up the bonds issued under the provisions of this act, as they are presented at maturity.

SEC. 11. *Be it further enacted*, That the tax collector shall make an annual settlement with said court at such times as it may direct, and in such settlements all bonds issued under the provisions of this act, and paid off and taken up by him, shall be his vouchers for the payment of the same; and upon such settlement he shall deliver said bonds to said court, which shall register them in a book to be kept for that purpose, and shall then burn them.

SEC. 12. *Be it further enacted*, That all laws now in force, as to the duties of the collectors of State and county taxes, as to giving notice of the place and time of collecting taxes, return of insolvents, and persons removed, and the examination thereof, and the correction and approval and allowance of the same, and all the powers, duties, and penalties now in force in regard to the collectors of State and county taxes, shall apply with equal force to the collector under the provisions of this act.

SEC. 13. *Be it further enacted*, That the tax collector must executed, to each individual, corporation, or company paying a tax under the provisions of this act, a receipt which must state the amount so paid,
53 and for what purpose. The said receipt shall be assignable, as cotton receipts now are; and when any person, corporation, or company, either in their own right, or by virtue of an assignment as above, shall file with the treasurer of the Tennessee & Alabama Central Railroad Company said receipt, to the amount of twenty-five dollars or upwards, it shall be the duty of the said treasurer to issue to such person, corporation, or company, a certificate for the aggregate amount of the receipt so filed; in which said company shall acknowledge payment to the amount in said certificate specified; the said certificate shall itself be assignable in the same manner as other railroad stock generally is, and shall constitute the owner thereof a shareholder in the said company, and shall entitle him to all the rights, benefits, and advantages enjoyed by any other subscriber to the stock of said company.

SEC. 14. *Be it further enacted*, That, in all the meetings of the stockholders of said company, held after the issue of the bonds before mentioned, the probate judge of Limestone County shall, in person or by proxy, represent all that portion of the county subscription of two hundred thousand dollars for which certificates of stock have not been granted by the treasurer, as prescribed in the preceeding section of this act; and he shall be allowed one vote for each twenty-five dollars
54 of such portion. But this section shall not be construed as entitling him to receive the dividend' which may be from time to time declared upon such portion, but the same shall be paid to the holders of the tax collector's receipts to whom no certificates of stock has been issued, in the same manner as they are paid to those who have received said certificates.

SEC. 15. *Be it further enacted*, That the provisions of this act shall as fully apply in the event that portion of the Tennessee & Alabama Central Railroad which lies in Limestone County, only, shall be constructed as provided for in section 23rd of the act incorporating the same, as if the entire line of said road were under contract, the conditions of section 4 of this act having been complied with.

SEC. 16. *Be it further enacted*, That, in the event an amalgamation shall be made of the companies of the Central Southern Railroad and the Tennessee & Alabama Central Railroad, or that portion of it referred to in the preceeding section of this act, as provided for in section 22nd

of the act incorporating the latter, then and in that event the provisions of this act shall be in as full force and effect as if such amalgamation had not been made.

SEC. 17. *Be it further enacted*, That whatever amount shall be reported by a competent engineer, to be employed by the Tennessee & Alabama Central Railroad Company, after a careful, thorough, and
55 accurate survey of said line through Limestone County, as sufficient to build the same, shall be deemed and held when exhibited by said company to said court as a sufficient amount under the provisions of this act.

SEC. 18. *Be it further enacted*, That the court of county commissioners aforesaid shall decide upon the solvency of the subscription, and for all the purposes of this act the county subscription of two hundred thousand dollars shall be deemed and held by them as solvent, but in determining the sufficiency of the amount subscribed, as prescribed in the preceeding section of this act, it shall be their duty to make the proper allowance for whatever appreciation or depreciation the aforesaid county bonds may sustain in their negotiation.

SEC. 19. *Be it further enacted*, That any member of said court of county commissioners refusing to carry out the provisions of this act, or failing to attend the meetings of said court purposely to defeat the execution of this act, shall be subject to all the penalties, fines, and forfeitures now in force for failure to perform his duties as a member of said court, and in addition thereto he shall be liable to pay to said company all such damages as it may have sustained on account of such wrongful refusal or absence.

SEC. 20. *Be it further enacted*, That the court of county commissioners aforesaid shall have power and authority to do all and other acts and things, not inconsistent with the provisions of this act, which may
56 be necessary and proper to give full effect to the objects and provisions of this act.

(Endorsed :) "Exhibit C D," filed May 16th, 1870. Lionel W. Day, clerk, D. C.

57 "EXHIBIT H."

An act to authorize the sale of the bonds of the county of Limestone.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That the bonds of the county of Limestone, issued by the court of county commissioners of said county, in aid of the Tennessee and Alabama Central Railroad Company, under an act of the legislature of the State of Alabama, passed December 14, 1855, entitled an act to authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital stock of the Tennessee and Alabama Central Railroad Company, be, and the same are hereby, made transferable either by endorsement or delivery.

SEC. 2. *Be it further enacted*, That said company be, and it is hereby, authorized to sell and dispose of said bonds at their market value, or upon such terms and at such discount as to said company may seem proper.

SEC. 3. *Be it further enacted*, That said company be, and it is hereby, authorized to bind itself for the redemption of said bonds, either by endorsement on the same, or in any other way that it may deem advisable,

or to mortgage any or all of its property, including its track and franchises for the redemption of the same; and any such contract or contracts shall enure to the benefit of the transfer'er or transfer'ers, holder or holders, of any bond or bonds embraced in such contract or mortgage.

58 SEC. 4. *Be it further enacted*, That all laws and parts of laws contravening the provisions of this act be, and the same are hereby, repealed.

Approved February 8th, 1858.

(Endorsed:) Filed May 6th, 1870. Exhibit H. Lionel W. Day, clerk D. C.

59 "C A."

Tenn. & Ala. Central R. R. Company to Jonathan McDonald & others. Mortgage.

This indenture made this the 29th day of July, in the year of our Lord one thousand eight hundred and fifty-eight, between the Tennessee and Alabama Central Railroad Company, a company duly chartered by the State of Alabama, and now acting, contracting, and doing business under and by virtue thereof, of the one part, and Jonathan McDonald, James W. Sloss, Booth M. Jones, Henry W. Fennell, James W. Allen, William T. Allen, Thomas Redus, Benjamin M. Grigsby, John C. Orr, William W. Phillips, Luke Pryor, Robert C. Brickell, Andrew C. Legg, of the State of Alabama, and John J. Howard, of the State of Georgia, of the other part: Witnesseth, that whereas the said Tennessee and Alabama Central Railroad Company by and through its president and directors acting in their official capacity, in session at a meeting duly called, acting and doing business for the said company as the president and directors thereof, at the place of holding their meetings in the town of Athens, Limestone County, State of Alabama, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight, did at said time and place sell to each of the persons respectively above named, bonds of the county of Limestone, State of Alabama, payable to the said Tennessee and Alabama Central Railroad Company, of the description, dates, and amounts hereinafter mentioned, the

60 said bonds being held and owned by the said Tennessee and Alabama Central Railroad Company, the same bonds being made, issued, executed, and delivered by the said county of Limestone to the said company as an acknowledgement of debt due said company, and for the purpose of aiding in the construction of the said Tennessee and Alabama Central Railroad; that is to say, said company did sell to Jonathan McDonald bonds upon said county, calling upon their face for three thousand dollars, due first of March, one thousand eight hundred and sixty-three; three thousand dollars, due first of March, one thousand eight hundred and sixty-four; three thousand dollars, due first of March, one thousand eight hundred and sixty-five; three thousand dollars, due first of March, one thousand eight hundred and sixty-six, and three thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to the sum of fifteen thousand dollars, for which the said Jonathan McDonald is to pay the sum of six thousand six hundred dollars. Also to James W. Sloss, bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of

March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five;
61 one thousand dollars, due the first of March, one thousand eight hundred and sixty-six, and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said James W. Sloss is to pay the sum of two thousand two hundred dollars. Also to Booth M. Jones bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six, and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven; amounting in all to five thousand dollars, for which the said Booth M. Jones is to pay the sum of two thousand two hundred dollars. Also to Henry W. Fennell bonds, upon their face calling for two thousand dollars, due first of March, one thousand eight hundred and sixty-three; two thousand dollars, due first of March, one thousand eight hundred and sixty-four; two thousand dollars, due first of March, one thousand eight hundred and sixty-five; two thousand dollars, due first of March, one thousand eight hundred and sixty-six, and two thousand dollars, due first March, one thousand eight hundred and sixty-seven, amounting in all to ten thousand dollars, for
62 which the said Henry Fennell is to pay the sum of four thousand four hundred dollars. Also to James W. Allen bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six, & one thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said James W. Allen is to pay the sum of two thousand two hundred dollars. Also to William T. Allen bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six, and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said William T. Allen is to pay the sum of two thousand and two hundred dollars. Also to Thomas Redus bonds, upon their face calling
63 for two thousand dollars, due first of March, one thousand eight hundred and sixty-three; two thousand dollars, due first of March, one thousand eight hundred and sixty-four; two thousand dollars, due first of March, one thousand eight hundred and sixty-five; two thousand dollars, due first of March, one thousand eight hundred and sixty-six, and two thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to ten thousand dollars, for which the said Thomas Redus is to pay four thousand four hundred dollars. Also to Benjamin M. Grigsby bonds, upon their face calling for two thousand dollars, due first of March, one thousand eight hundred and sixty-three; two thousand dollars, due first of March, one thousand eight hundred and sixty-four; two thousand dollars, due first of March, one thousand eight hundred and sixty-five; two thousand

dollars, due first of March, one thousand eight hundred and sixty-six; and two thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to ten thousand dollars, for which the said Benjamin M. Grigsby is to pay the sum of four thousand four hundred dollars. Also to John C. Orr bonds, upon their face calling for two thousand dollars, due first of March, one thousand eight hundred and sixty-three; two thousand dollars, due first of March, one thousand eight hundred and sixty-four; two thousand dollars, due first of
64 March, one thousand eight hundred and sixty-five; two thousand dollars, due first of March, one thousand eight hundred and sixty-six; and two thousand dollars, due first of March, one thousand eight hundred and sixty-seven, for which the said John C. Orr is to pay the sum of four thousand four hundred dollars, and which said several bonds amount to the sum of ten thousand dollars. Also to William W. Phillips bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six; and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said William W. Phillips is to pay the sum of two thousand two hundred dollars. Also to Luke Pryor bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six; and one thousand dollars, due first
65 of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said Luke Pryor is to pay two thousand two hundred dollars. Also to Robert C. Brickell bonds, upon their face calling for one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six; and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to five thousand dollars, for which the said Robert C. Brickell is to pay two thousand and two hundred dollars. Also to Andrew C. Legg bonds, upon their face calling for two thousand dollars, due first of March, one thousand eight hundred and sixty-three; two thousand dollars, due first of March, one thousand eight hundred and sixty-four; two thousand dollars, due first of March, one thousand eight hundred and sixty-five; two thousand dollars, due first of March, one thousand eight hundred and sixty-six; and two thousand dollars, due first of March, one thousand eight hundred and sixty-seven, amounting in all to ten thousand dollars, for which the said Andrew C. Legg is to pay four
66 thousand four hundred dollars. Also to John J. Howard, of Georgia, bonds, on their face calling for twenty thousand dollars, due first of March, one thousand eight hundred and sixty-two, for which the said John Howard is to pay the sum of thirteen thousand six hundred dollars. And upon the express understanding and agreement, as a part and parcel of the contract, inducement, and consideration with the parties of the second part, that, upon their paying the sums of

money respectively, as above stated, for the bonds above described as sold to each respectively, that said Tennessee and Alabama Central Railroad Company would deliver said bonds to the parties respectively, *will* all proper endorsements; and that said company would guarantee the prompt payment of said bonds to the said parties respectively, by giving, executing, and making a first or preferred lien or mortgage upon the whole and entire assets of said company, including its rights of way, road-bed, iron, depots, rolling-stock, subscription, and all and everything belonging thereto, which said understanding or agreement, embracing, or intending to embrace, the terms of contract between the said company and the parties above named, respecting the selling, purchasing, and guaranteeing the payment of the said county bonds, is to be found in the shape of a resolution on the minutes or recorded proceedings of the said president and directors at their February meeting, dated Athens, Feb'ry the fifteenth
67 eighteen hundred and fifty-eight, commencing at the bottom of page forty-five, and ending near the bottom of page fifty-one, which said resolution contains the terms and in substance of the contract made between the said company and the parties above named, touching the selling, purchasing, and guaranteeing of the said county bonds, a copy of which proceedings and resolutions made and offered on the one side and accepted on the other is hereto appended, and to be taken and considered as part of this indenture for all purposes of interpretation, construction, and the arriving at the meaning, spirit, and intent of the selling & buying of the bonds above described, and the guaranteeing and securing of their prompt payment, and the security and indemnity intended thereby and hereby. And whereas the said parties above named, in pursuance of the agreement above mentioned, did pay over to the treasurer of *of* the said Tennessee and Alabama Central Railroad Company the sum and sums above mentioned, as agreed to be paid by each of the parties respectively for the bonds above described, and sold to each of the parties respectively. And now, that the contract between the said Tennessee and Alabama Central Railroad Company and the parties above named may be complied with on the part of the said company, (the said parties of the second part having in all things and respects performed their
68 part of the contract touching the sale of the said bonds,) and that the first and preferred lien or mortgage may be created and given on the entire assets, rights, credits, and other property of said Tennessee and Alabama Central Railroad Company, which was not only understood & agreed to be done by said company as a part of the contract between the parties, but as a prominent consideration and inducement to the parties of the second part to purchase said bonds and pay over to the said company the sums of money by the parties respectively above named, and the said company may fully execute its part of said contract and create the first and preferred lien or mortgage, as agreed, upon its entire assets, real and personal, rights and credits, choses in action, and all and everything belonging thereto as agreed: Now this indenture witnesseth that for and in consideration of the premises, and also for and in consideration of the sum of five dollars, the receipt whereof is hereby acknowledged, to the said Tennessee and Alabama Central Railroad Company paid by the said parties of the second part at and before the ensealing and delivery hereof, the said Tennessee and Alabama Central Railroad Company has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm, unto

Jonathan McDonald, James W. Sloss, Booth M. Jones, James
69 W. Allen, William T. Allen, Henry Fennell, William W. Phillips, John C. Orr, Thomas Redus, Andrew C. Legg, Benjamin M. Grigsby, Luke Pryor, Robert C. Brickell, and John J. Howard, their heirs and assigns, administrators, executors, assigns, and transferees forever, all that tract or parcel of land upon which, out of which, and to which the bed of the Tennessee and Alabama Central Railroad is built or constructed, including its entire road-bed and right of way, to the full extent of the charter, both as to length and breadth, together with all hereditaments and appurtenances thereunto belonging, fixture' attached, now existing or hereafter acquired or made; all the iron, whether of nails, chairs, or spikes, and of all kinds and amounts; all of its structures of every kind, its depots, and land upon which the same are built, and all and every part and parcel thereof, and everything attached thereto, locomotives, cars, and rolling-stock of every and all kinds and descriptions, subscription, stock-books, notes, bonds, and choses in action, due and owing said company, and all the estate, rights, titles, interest, property, possessions, claims, and demands whatsoever, and whether real, personal, or mixed, in law or equity, and all the chartered rights, powers, and privileges, and franchises, which the said company has or can, might, or could, or should have under
70 and by virtue of its charter; to have and to hold, all and singular, the above-described property, assets, franchises, rights, and credits, and powers above set out as if here repeated, unto the said *the said* parties of the second part, to them and their heirs, executors, administrators, assigns, and transferees, each and respectively, to their only proper use, benefit, and behoof forever; Provided always, and upon this express condition and understanding, that, if the county of Limestone, State of Alabama, shall well and truly pay off and discharge the said bonds above described, one and all, each and every *and every* part and parcel thereof, (and the interest which might accrue thereon,) as they mature or fall due, according to the tenor and effect thereof, or as the same may be presented for payment by the parties themselves respectively, or their heirs, executors, administrators, assigns, transferees, indorsers, or other proper holder thereof, so that no default be made in the prompt payment of all and every part of said bonds, as they fall due and payable, or are presented for payment by the proper holder thereof; that from then and from thenceforth this indenture, and every article, covenant, claim, and condition in the same contained, and the estate, powers, and rights hereby granted, shall cease, determine, and be utterly void and of none effect. But should the said county of Limestone fail or refuse to pay all and every part, parcel, and balance of said bonds as they fall due and
71 are presented by the said parties of the second part, their legal representatives, assigns, transferees, or other proper holders, to each and every one respectively, and every bond or balance due upon any and every bond herein guaranteed; then, and in such case, and in the event of such refusal, in whole or in part, by the said county of Limestone, with and towards all, or either one or the other, of the said parties of the second part, their representatives, assigns, transferees, or other proper holder of said bonds, the said Tennessee and Alabama Central Railroad Company expressly waives a suit against the said county of Limestone, to enforce satisfaction out of said county, as maker, before coming upon said company as assignor of said bonds; but upon a fair and full demand, made of, from, and upon the said county of Limestone, according to the tenor and effect of said bonds,

and payment thereof should fail or be refused, then, and in every such case and event, it shall and may be lawful for the parties of the second part, or either of them, or either of their representatives, assignees, or transferees, or other proper holder of said bonds, (and the said party of the first part doth hereby empower the parties of the second part, or either of them, or either of their representatives, executors, administrators, or assignees, or transferees, or other proper holder,) to take all necessary steps to foreclose this mortgage, on the assetts of, and ef-
72 fects of, this said company, and the whole of the property hereby conveyed to said parties of the second part, for the purpose of fully paying off the full amount that said bonds call for upon their face, together with all interest which may or shall accrue thereon. And should said county bonds turn out to be void in their incession, or should the county of Limestone refuse to pay the same, viz, the amount to be paid the said parties of the second part, or their, and each of their, lawful representatives or assignees, by the party of the first part, and the amount intended to be hereby guaranteed and secured, and for which this prefer'ed lien is created *as* a first mortgage given, is the amount which said bonds call for on their face, together with all interest which shall have accrued thereon in consequence of the failure and refusal of the county of Limestone to pay; then, in that event, it should be lawful for said parties of the second part to take steps necessary to foreclose the first mortgage upon said property and assets above mentioned, for the purpose of fully paying off said bonds hereby guaranteed and secured. It is further understood and agreed between the parties to this indenture, that in the event, and should said Tennessee and Alabama Central Railroad Company find it necessary, or think proper, to sell, or otherwise negotiate, the following bonds, drawn by the county of Limestone, State of Alabama, to wit, the Limestone
73 County bonds, for twenty thousand dollars, due first of March, one thousand eight hundred and sixty; twenty thousand dollars, due first of March, one thousand eight hundred and sixty-one; one thousand dollars, due first of March, one thousand eight hundred and sixty-three; one thousand dollars, due first of March, one thousand eight hundred and sixty-four; one thousand dollars, due first of March, one thousand eight hundred and sixty-five; one thousand dollars, due first of March, one thousand eight hundred and sixty-six; and one thousand dollars, due first of March, one thousand eight hundred and sixty-seven; that the said company shall have the right to place the said bonds just above mentioned upon an equal footing and entitled to the same guarantee, security, and benefits of those sold to the parties above named; and in all respects, and in all things, the purchasers and holders thereof shall be placed upon an equal footing and entitled to share equally as to the guarantee, security, and indemnity of those sold to the parties above named.

In testimony whereof James W. Sloss, as the president, and John T. Tanner, as the secretary, of the Tennessee and Alabama Central Railroad Company, in their official capacity as such, for and on account and in behalf of said company, sign their names hereto, and attach, by virtue of the charter of said company, the seal of said company
74 hereto; and James W. Sloss, William W. Phillips, Thomas Redus, John R. Mason, John C. Orr, Henry Fennell, Thomas N. Hobbs, and Jonathan McDonald, and Luke Pryor, as the president and directory for and in behalf of said company, at a regular meeting and while acting as a board of directors; and Jonathan McDonald James W. Sloss, Booth M. Jones, Henry Fennell, James W. Allen

William T. Allen, Thomas Redus, Benjamin M. Grigsby, John C. Orr, William W. Phillips, Luke Pryor, Robert C. Brickell, Andrew C. Legg, and John J. Howard, for themselves. All done the day and year above written.

[L. S.]

JA'S W. SLOSS,
Pres't T. & A. C. R. R. CO.
JNO. T. TANNER, *Sec'ty.*
JA'S W. SLOSS,
W. W. PHILLIPS,
THO'S REDUS,
JOHN R. MASON,
JOHN C. ORR,
HENRY FENNELL,
THOMAS N. HOBBS,
JONATHAN McDONALD,
LUKE PRYOR,
President & Directors of Tenn. & Ala. C. R. R. Co.

THE STATE OF ALABAMA,
Limestone County:

I, Thomas G. Tyus, judge, & ex-officio clerk of the probate court of said county, hereby certify that James W. Sloss, as the president, and John T. Tanner as the secretary of the Tennessee & Alabama Central Railroad Company, in their official capacity as such, and James
75 W. Sloss, William W. Phillips, Thomas Redus, John R. Mason, John C. Orr, Henry Fennell, Thomas N. Hobbs, Jonathan McDonald, and Luke Pryor, as the president and directors for and in behalf of said company, whose names are signed to the within conveyance, and who are known to me, acknowledged before me, on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date. In testimony whereof I have hereunto set my name and affixed the seal of said court, at office in Athens, this 22nd day of September, 1858.

[L. S.] THOMAS G. TYUS, *Judge.*

The foregoing conveyance was filed in my office for record on the 22nd day of September, 1858, and was duly recorded the same day, in deed-book No. 10, pages 192, 3, 4, 5, 6, 7, & 8.

Test: THOMAS G. TYUS, *Judge P. C.*

Copy of resolution passed by the board of directors of Tenn. & Alabama Central Railroad Company, 15th February, 1858.

Luke Pryor, esq., offered the following resolution in reference to the sale of the county bonds, which was unanimously adopted, to wit:

Whereas we, the pres't & directors of the Tenn. & Ala. Central R. R. Co., in the behalf of and on the part of said co., sold to each
76 of the following persons the following bonds, of Limestone County, to wit: To Jonathan McDonald, bonds, upon their face calling for three thousand dollars due 1st March, 1863; three thousand dollars, due 1st March, 1864; three thousand dollars, due 1st March, 1865; three thousand dollars, due 1st March, 1866, and three thousand dollars, due 1st March, 1867, amounting in all to fifteen thousand dollars, for which the said McDonald is to pay the sum of six thousand six hundred dollars; also to James W. Sloss, bonds, upon their face calling for one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st

M'ch, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st March, 1866, and one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said J. W. Sloss is to pay the sum of two thousand two hundred dollars; also to Booth M. Jones, bonds, upon their face calling for one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st March, 1866, and one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said B. M. Jones is to pay the sum of two thousand two hundred dollars; also to Henry Fennell, bonds, upon their face calling for two thousand dollars, due 1st March, 1863; two thousand dollars, due 1st March, 1864; two thousand dollars, due 1st March, 1865; two thousand, due 1st March,
77 1866; two thousand dollars, due 1st March, 1867, amounting in all to ten thousand dollars, for which the said Henry Fennell is to pay the sum of four thousand four hundred dollars; also to James W. Allen, bonds, upon their face calling for one thousand dollars, due 1st M'ch, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st M'ch, 1865; one thousand dollars, due 1st March, 1866; one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said James W. Allen is to pay the sum of two thousand two hundred dollars; also to W'm T. Allen, bonds, upon their face calling for one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st M'ch, 1865; one thousand dollars, due 1st March, 1866; one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said W'm T. Allen is to pay the sum of two thousand two hundred dollars; also to Thomas Redus, bonds, upon their face calling for two thousand dollars, due 1st March, 1863; two thousand dollars, due 1st March, 1864; two thousand dollars, due 1st March, 1865; two thousand dollars, due 1st March 1866; two thousand dollars, due 1st March, 1867, amounting in all to ten thousand dollars, for which the said Thomas Redus is to pay four thousand four hundred dollars; also, to Benjamin M. Grigsby, bonds, upon their face calling for two thousand dollars, due 1st March, 1863; two thousand dollars, due 1st M'ch, 1864; two thousand dollars, due 1st M'ch, 1865;
78 two thousand dollars, due 1st M'ch, 1866; two thousand dollars, due 1st M'ch, 1867, amounting in all to ten thousand dollars, for which the said Benjamin M. Grigsby is to pay the sum of four thousand four hundred dollars; also to J. C. Orr, bonds, upon their face calling for two thousand dollars, due 1st March, 1863; two thousand dollars, due 1st March, 1864; two thousand dollars, due 1st Mc'h, 1865; two thousand dollars, due 1st M'ch, 1866; two thousand dollars, due 1st March, 1867, amounting in all to ten thousand dollars, for which the said J. C. Orr is to pay the sum of four thousand four hundred dollars; also to Warren W. Phillips, bonds, upon their face calling for one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st March, 1866, and one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said Warren W. Phillips is to pay the sum of two thousand two hundred dollars; also to Luke Pryor, bonds, upon their face calling for one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st March, 1866; one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which said Luke Pryor is to pay two

thousand two hundred dollars; also to Robert C. Brickell, bonds, upon their face calling for one thousand dollars, due 1st March, 1863;
79 one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st M'ch, 1866; one thousand dollars, due 1st March, 1867, amounting in all to five thousand dollars, for which the said Robert C. Brickell is to pay two thousand two hundred dollars; also to Andrew C. Legg, bonds, upon their face calling for two thousand dollars, due 1st March, 1863; two thousand dollars, due 1st March, 1864; two thousand dollars, due 1st March, 1865; two thousand dollars, due 1st March, 1866, and two thousand dollars, due 1st M'ch, 1867, amounting in all to ten thousand dollars, for which the said Andrew C. Legg is to pay the sum of four thousand four hundred dollars; also to John J. Howard, bonds, on their face calling for twenty thousand dollars, due 1st M'ch, 1862, for which the said John J. Howard is to pay the sum of thirteen thousand six hundred dollars.

It is further agreed and understood that the said parties are to pay the respective amounts for the purchase of said bonds on the 1st March, 1858; and if any shall desire to pay sooner than that date, then and in that case it is further understood and agreed that the company will pay them interest on the amount paid to the 1st March, 1858. And whereas the said county bonds are now deposited in the Bank of the Republic, New York City, a collateral security to and for a debt arising out of contract between the said company and one Theodore Dehon for the
80 purchase of iron; and whereas it is necessary, intended, and expected that the said debt due to the said Dehon is to and will be paid in part with the money arising from the sale of said bonds, it is hereby agreed, understood, and contracted on the part of said company, by and through its president and directory, that upon the payment by the said parties above, (the purchasers,) the several sums of money each has agreed to pay for the bonds purchased by them to the treasurer of said co., in the town of Athens, in current bank-notes, the said company will and shall with the monies arising from the sale of said bonds, together with other monies & means, pay the said debt due the said Dehon, redeem, relieve, procure, and deliver the said bonds within a reasonable time to the said purchasers respectively with all proper endorsements. And further, they expressly agree to guarantee not only a redemption and delivery of the said bonds to the parties respectively, but upon the payment of the same by each respectively the said company at any time after the payment aforesaid, agrees to guarantee the prompt payment of the said bonds, and to this end hereby agrees to accomplish this either by a guarantee on the bonds by creating a first or prefer'ed lean or first mortgage, on the whole and entire assets of the said co., including its rights of way, "road-bed," iron, depots, "rolling stock, subscrip-
81 tion, and all and everything belonging thereto, and rights, credits, and dues of every kind and description, and expressly waiving a suit first against the company or other party at the election of the bondholder, should said bonds not be promptly met according to tenor and effect. But the holder *then or* may at his discretion proceed at once against said company by suit or under his first guarantee or foreclose his first mortgage, the full object being hereby to create a first and superior lien now or hereafter upon the whole and entire assets of the road, until the said bonds are entirely paid, and to create a first lien on the same to secure the payment of said bonds. It being, however, further understood and agreed between the above-named parties and the said co., that in the event, and should the said company find it necessary

or think proper to sell or otherwise negotiate the following bonds hereafter, to wit, the Limestone County bonds, for twenty thousand dollars, due 1st M'ch, 1860; twenty thousand dollars, due 1st M'ch, 1861; one thousand dollars, due 1st March, 1863; one thousand dollars, due 1st March, 1864; one thousand dollars, due 1st March, 1865; one thousand dollars, due 1st March, 1866; one thousand dollars, due 1st March, 1867; that the said co. shall have the right to place the said bonds upon equal footing and entitled to the same guarantee, security, and benefit of those sold to the parties above named, and in all respects and in
82 all things the purchasers thereof shall be placed upon equal footing and entitled to share equally as to the guarantee, security, indemnity, and leans of those above named. And should the said company fail or refuse, upon the payment of the said several sums of money by the purchase' above named, one or all, by a reasonable time to redeem and deliver the said bonds above described and sold to the parties respectively, and to guarantee and secure to the extent above mentioned, then the said company shall pay said parties respectively all damage which they shall sustain by such failure or refusal.

(Signed) J. W. SLOSS, *Pres't.*

(Signed) JNO. T. TANNER, *Secretary.*

I hereby certify that the abvoe and foregoing proceedings *is* a true copy of the action of the board of directors of the Tennessee and Alabama Central Railroad Company, as appears upon the minute-book, at a regular meeting in the town of Athens, February 15th, 1858.

July 29th, 1858.

JNO. T. TANNER, *Secretary.*

(Endorsed:) Copy of mortgage. Exhibit C A. Filed May 16th, 1870. Lionel W. Day clerk D. C.

83 "EXHIBIT K."

An act to change the name of the Tennessee & Alabama Central Railroad Company.

Whereas the Tennessee & Alabama Central Railroad Company, under authority given by the act of incorporation of said company, approved the 14th of December, 1853, did consolidate with the Central Southern and Tennessee Alabama Railroad into one company, to be known and styled "The Nashville & Decatur Railroad Company:" Therefore,

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That the consolidation aforesaid is hereby confirmed and declared valid.

SEC. 2. *Be it further enacted*, That the name of the Tennessee and Alabama Central Railroad Company be changed, and that hereafter said road be known by the corporate name and style of the Nashville & Decatur Railroad.

Approved February 19th, 1867.

(Endorsed:) Filed May 16th, 1870. Lionel W. Day, clerk D. C.

84 *Exhibit "M" to bill.*

An act for the benefit of the Nashville & Decatur Railroad Co., and for other purposes.

Whereas by an act of the general assembly of the State of Tennessee, passed April 19, 1866, authorizing the Tennessee & Alabama Railroad

Company, the Central Southern Railroad Company, and the Tennessee & Alabama Central Railroad to consolidate their companies into one company to be known and styled the Nashville & Decatur Railroad Company;

And whereas the stockholders met at Columbia, Tennessee, on Wednesday the 21st day of November, 1866, agreed to and confirmed the terms of consolidation;

And whereas at the said stockholders' convention there were fifteen directors elected, to serve for the ensuing twelve months: Therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee*, That the consolidation aforesaid be, and the same is hereby, as fully confirmed in all respects as if the convention had been held on the first Monday in May, 1866, and that the said consolidation, and all acts of said convention be, and the same are hereby, declared valid.

SEC. 2. *Be it further enacted*, That under the said consolidation, the shares of stock in said company shall represent twenty-five dollars each.

SEC. 3. *Be it further enacted*, That the board of directors of said company be, and the same are hereby, authorized to aid in the construction of the road south of Decatur, in the direction of Line Station,
85 either by taking stock in the same, endorsing the bonds of any company undertaking its construction, or by any other means in their power; and for that purpose they are hereby authorized to issue the bonds of the company to an amount not to exceed one million dollars, upon such terms and conditions as a majority of the board of directors may elect: *Provided*, The interest on said bonds shall not exceed ten per cent. per annum.

SEC. 4. *Be it further enacted*, That a majority of the said board of directors be, and the same are hereby, authorized to issue not exceeding five hundred thousand dollars of preferred stock in said consolidated company, or to issue income bonds of said company to an amount not exceeding five hundred thousand dollars, at a rate of interest not to exceed two per cent. per annum, as they may elect: *Provided*, That nothing in this act shall be so construed as to invalidate the lien or priority of the State against railroads hereby consolidated.

SEC. 5. *Be it further enacted*, That the Louisville & Nashville Railroad Company are entitled to all the privileges of section 3 of this act, and that this act shall take effect from and after its passage.

J. S. MULLOY,
Speaker pro tem. of the House of Representatives.
JOSHUA B. FRIERSON,
Speaker of the Senate.

Passed March 8th, 1867.

(Endorsed:) "Exhibit M." Filed May 16, 1870. Lionel W. Day, cl'k D. C.

86 The President of the United States to the marshal for the northern district of Alabama, greeting:

You are hereby commanded to summon the Nashville & Decatur Railroad Company and the county of Limestone, in the State of Alabama, if to be found in your district, that they, laying aside all excuse, appear personally at the office of the clerk of the district court of the northern district of the State of Alabama, in the city of Huntsville, in said district, on the rule day to be held on the first Monday in July next, to answer, plead, or demur to the bill of complaint exhibited in said district court by John C. Orr, a citizen of the State of Mississippi,

complainant, against the Nashville & Decatur Railroad Company & Limestone County, State of Alabama, defendants. A copy of which bill will be furnished on application to the clerk.

Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness, the Hon. Richard Busteed, judge of said district court at Huntsville, in said district, this the 16th day of May, in the year of our Lord one thousand eight hundred and seventy, and of American Independence the ninety-fourth year.

[SEAL.] Attest: LIONEL W. DAY,
Clerk of said District Court U. S.

Issued the 16th day of May, A. D. 1870.

MEM.—The defendants are to enter their appearances and to file their answers or demurrers to said bill, in the clerk's office, on or before the day on which this writ is returnable; otherwise a decree pro confesso may be entered.

The marshal is required to execute this writ twenty days before the return day thereof.

(Endorsed:) "Executed on the county of Limestone by delivering a copy to Joshua P. Coman, judge of probate court of said county, May 19, 1870.

E. E. DOUGLASS, *Marshal*,
Per C. W. HAYES, *Special Deputy.*

Executed the within notice by leaving copy with J. W. Sloss, president of the Nashville & Decatur Railroad Co., this 23d day of May, 1870.

E. E. DOUGLASS, *U. S. Marshal*,
Per W. J. FRANKS, *Deputy.*

87 *Proof of service.*

UNITED STATES OF AMERICA,
Northern District of Alabama:

Before me, John Lamb, a commissioner appointed by the district court of the United States for the northern district of Alabama to take affidavits, &c., personally appeared William H. Leutz, who, being duly sworn, deposeth and sayeth, that Joshua P. Coman, on whom the enclosed notice was served, was at the time of such service, judge of the court of probate of the county of Limestone, State of Alabama, and that Benjamin M. Sowell, on whom said notice was served, was, at the time of such service, the agent of the Nashville & Decatur Railroad Company, at the town of Athens, Alabama, having charge of the office and depot of said company there. That James W. Sloss, who is, and has been for twelve months past, the president of said Nashville & Decatur Railroad Company, and who resides in said town of Athens, was absent, and therefore service of said notice was not made on him.

W'M H. LEUTZ.

Sworn to and subscribed before me at my office in the town of Athens, in said district, May 25th, 1871.

JNO. LAMB,
U. S. Commissioner.

88 *Demurrer.*

In the district court of the United States for the northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY and The County of Limestone, in the State of Alabama.

The defendant, The Nashville & Decatur Railroad Company, by protestation not confessing any of the matters in and by said bill complained of to be true, in manner and form as the same are set forth, doth demur to said bill, and for causes of demurrer sets down the following:

1. That it appears from said bill that said bonds of said county of Limestone, held and owned by complainant as alleged in his said bill, were and are made payable to the Tennessee & Alabama Central Railroad Company, its order, and assigns.

2. That it appears from said bill that besides the bonds of said county of Limestone, held and owned by complainant as alleged in his said bill, and secured by said mortgage, as alleged in said bill, there were, when said suit was brought, outstanding and unpaid, other bonds of said county, secured in and by said mortgage in manner and extent as said bonds held and owned by complainant; the holders & owners of which other outstanding bonds are not made parties to this suit.

89 3. That by said bill the owners and holders of the other outstanding bonds of said county of Limestone, secured in and by said mortgage, as alleged by complainant, are not made parties either complainant or defendant, and no reason is shown or stated why said other bondholders are not made parties to this suit.

4. That it appear from said bill that this court has no jurisdiction of this suit.

5. That complainant has not by his said bill made such a case as entitles him to any relief against this defendant.

6. That it is not shown or alleged in and by said bill that it would be impracticable or difficult to make the holders of the other outstanding bonds of said county parties to this suit, or that it was impracticable or difficult for complainant to ascertain the names and residences of the said holders of said other outstanding bonds.

7. That by said bill there is a misjoinder of defendants thereto.

8. That it appears from said bill that complainant is not entitled to sue this defendant and the said county of Limestone in this court upon the cause of action in said bill alleged.

Wherefore this defendant prays the judgment of this court whether this defendant shall be compelled to make any further answer to this bill.

HOUSTON & PRYOR, & ROBINSON & WALKER,
Sol's for said Defendant.

90 We, the undersigned, counsel for the defendant, The Nashville & Decatur Railroad Company, do hereby certify that, in our opinion, the above demurrer is well founded in point of law.

HOUSTON & PRYOR, & ROBINSON & WALKER,
Sol's for Def'd't.

Ja's W. Sloss, being sworn, says, that he is the president of said Nashville & Decatur Railroad Company, a defendant in the above-mentioned suit, and that the above demurrer is not interposed for delay.

J. W. SLOSS.

Subscribed & sworn to before me this 25th of May, 1871.

LIONEL W. DAY, *Clerk D. C.*

(Endorsed:) Filed May 25th, 1870. Lionel W. Day, clerk D. C.

91 *Answer of the Nashville & Decatur R. R. Co.*

In the district court of the United States for the northern district of Alabama.

The separate answer of the Nashville & Decatur Railroad Company to the bill of complaint heretofore filed in said court by John C. Orr, complainant, against the said Nashville & Decatur Railroad Company & the county of Limestone, in the State of Alabama, defendants.

This respondent, saving & reserving all benefits of exceptions to the errors and insufficiencies of said bill of complaint, & without waiving objections to the jurisdiction of the court, for answer thereto, says:

1. The allegations made in the section of said bill, numbered 1, are admitted to be true.

2. The allegations made in the section of said bill, numbered 2, are admitted to be true.

3. The allegations made in section 3 of said bill are true.

4. It is true that on the 14th day of December, 1855, the legislature of Alabama passed an act entitled "An act to authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital stock of the Tennessee & Alabama Central Railroad Company," & respondent supposes that the statement con-
92 tained in section 4 of said bill of complaint, as to the *possessions* of said act of said legislature, are correct; but for greater certainty on this point respondent refers to the copy of said act exhibited with said bill as Exhibit C D thereto.

5. Respondent supposes that the provisions of said act of the legislature of Alabama, recited in section 5 of said bill of complaint, are correctly set forth in said section 5; but for greater certainty & for the correction of any mistake which may be made in said recital, respondent refers to said copy of said act, filed with said bill of complaint as Exhibit C D. by which reference all the provisions of said act of said legislature will be seen & understood.

6. The allegations of section 6 of said bill of complaint are true, except the statement that said bonds were payable to the Tennessee & Alabama Central Railroad Company, its order, or transferees, which statement is not true. For a clearer understanding of the form of said bonds, respondent files herewith a copy of one of said bonds, marked Exhibit A, & states that, except as to amount (some being for one thousand & some for five hundred dollars) & time of payment, all of said bonds were in the same form, and all payable to the Tennessee & Alabama Central Railroad Company, its order, or assigns.

7. It is true that on the 8th February, 1858, the legislature of Alabama did pass an act entitled "An act to authorize the sale of the bonds of the county of Limestone," and respondent supposes
93 that the provisions of said act are correctly recited in section 7

of said bill of complaint; but for greater certainty in this point respondent refers to the copy of said act referred to in said section 7, as marked (H') & prayed to be taken as part of said bill of complaint.

8. It is true that about the year 1858 the said Tennessee & Alabama Central Railroad Company did execute a mortgage to secure the payment of certain bonds of said county of Limestone, issued under said act of the legislature of Alabama passed, & which bonds were transferred & assigned by said company to the persons for whose benefit said mortgage was executed; but respondent has not the custody of or access to said mortgage, and does not know where or in whose hands it is. Respondent is unable to state whither the parties to said mortgage are correctly named in said section 8 of said bill of complaint, or whether the provisions of said mortgage are correctly recited therein; or whither the papers filed with said bill of complaint, marked "C A," is a true copy of said mortgage. Respondent cannot admit or deny said allegations; and, if they are material, calls for proof thereof. As to whither said mortgages was only recorded, as alleged, respondent does not know, & is unable
94 to state. Respondent only knows that a mortgage to secure said bonds was executed in 1858; but what was done with it after its execution, or who took charge of it, respondent cannot tell, having no knowledge or information on the subject.

9. Respondent has been informed that complainant held some of the bonds secured by the mortgage executed by said complainant about 1858, referred to in the proceeding section of this answer, but has no distinct knowledge on the subject. And as to whither complainant is the owner & holder of the particular bonds referred to in section 9 of said bill, this respondent has no knowledge or information, and can neither admit or deny the allegation, and, if necessary, calls for the proof thereof. As to what payments have been made on said bonds claimed by complainant, respondent has no knowledge, & can neither admit or deny the statement in said section 9 on this point, and, if necessary, respondent calls for proof of said statement.

10. The allegations of section 10 of said bill of complaint are true, with this qualification: that respondent does not admit that said mortgage is correctly recited in said bill, or that said Exhibit C A is a true copy thereof.

11. It is true that the said Tennessee & Alabama Central Railroad
95 Company acquired & owned the right *on* way whereon the said railroad was constructed by them. It is not true, as alleged by complainant in sec. 11 of said bill of complaint, that said Tennessee & Alabama Central Railroad Company "held & owned many locomotive engines, passenger & freight cars, all *off* which were conveyed by said mortgage. For a full answer to this allegation & in order that the facts on this point may be clearly understood, respondant says that at the time of the sale of said bonds, secured by the mortgage which said company executed about 1858, as before stated, and when said mortgage was executed, the said Tennessee & Alabama Central Railroad Company owned one locomotive engine, three box-cars, five flat cars, & one mail, baggage, & passenger combination car. This was all the rolling-stock then owned by said company. After the execution of said mortgage, & prior to the year 1865, said company became the owner of two locomotive engines & one passenger-car in addition to the said rolling-stock so owned when said mortgage was executed; all of said rolling-stock so owned at the date of said mortgage or acquired by said company prior to 1865, was lost or destroyed during the late war with the exception of

96 two locomotive engines now in possession of the respondent, one of which said locomotives is of the value of about seven thousand dollars, and the other in such a wrecked & ruined condition as to be wholly valueless, except as furnishing scrap-iron, its entire value for any purpose not being more than five hundred dollars. In the year 1865, the Tennessee & Alabama Central Railroad Company purchased from the Government of the United States locomotives & cars estimated to be at the value of eighty-five thousand four hundred & twenty-one dollars, & at that price, the said company giving to the United States, at the time of said purchase a lien on said locomotive & cars to secure the payment of said sum, a copy of which said lien is herewith filed, marked C, and prayed to be considered a part of this answer. At the time of the consolidation of said Tennessee & Alabama Central Railroad Company with the other companies named in the 12th section of said bill of complaint, and to which consolidation more particular reference will be hereinafter made, the only rolling-stock of which said Tennessee & Alabama Central Railroad Company was the owners, consisted of said two injured locomotives above mentioned, & the said locomotives & cars purchased from the United States & on which
97 the United States had a preference-lien as above stated.

12. It is true that on the 21st November, 1866, at a convention of the stockholders of the Tennessee & Alabama, the Central Southern, & the Tennessee & Alabama Central Railroad Companies, the said stockholders agreed upon a consolidation of said three railroad companies, the chief terms of said consolidation being that each of said three companies shall surrender to the Nashville & Decatur Railroad Company all the rights, franchises, & property, the Nashville & Decatur Railroad Company assuming to pay all debts owned by the several companies. The manner in which said consolidation was attempted to be effected will fully appear from the proceedings of said convention of stockholders in connection with the proceedings of the executions committee of the Nashville & Decatur Railroad line, on June 28th, 1866, & October 23d, 1866, and with the acts of the legislature of the State of Tennessee, passed respectively April 19th, 1866, & March 8th, 1867, & with the act of the legislature of the State of Alabama entitled an act to change the name of the Tennessee & Alabama Central Railroad Company,
98 approved February 18th, 1867. Copies of the proceedings of said convention of stockholders & of the Nashville & Decatur Railroad line, and of the said acts of the legislature of Tennessee, passed April 19th, 1866, & March 8th, 1867, are herewith filed, marked Exhibit B, & prayed to be taken as part of this answer, all of said copies being included in & parts of the same exhibit. It is true that on the 19th February, 1867, the legislature of Alabama did pass an act entitled "An act to change the name of the Tennessee & Alabama Central Railroad Company," and that the copy thereof filed with said bill of complaint & marked K is a correct copy. In reference to said act, respondent is advised that there may be a question as to its validity & legal effects, & respondent reserves the right to raise any such question, of the same shall be important or material to the interests of respondent, nothing herein stated being intended as an admission of the validity or legal effect of said act. It is true that after the consolidation so attempted to be effected, the said Nashville & Decatur Railroad Company became possessed of the entire property, rights of property & franchises of the Tennessee & Alabama Central Railroad Company, and are now
99 using, enjoying, & exercising the same. As to whether the corporate existence of said Tennessee & Alabama Central Railroad

Company has become merged in that of the Nashville & Decatur Railroad Company respondent is advised that that is a question of law, not of fact, and that its determination rests with the court. At the time of said consolidation complainant was a holder of some of the bonds issued by said county & secured by the mortgage executed by the company as before mentioned, and as respondent is informed actually & encouraged & favored said consolidation.

13. This respondent knows nothing as to the presentment & demand of payment, alleged in the 13th section of said bill of complaint or of the refusal to comply with said demand, & if material, respondent requires proof of said allegation.

14. The respondent nothing of the presentment of said bonds to said commissioners' court & demand of payment thereof, or of the alleged refusal of said commissioners' court to pay the same, &, if material, respondent calls for proof of said allegation. As respondent is informed & believes & so states, it is true that said court of county-commissioners did at one time refuse to levy & collect taxes
100 for the payment of said bonds, but after said refusal, and on the petition of complainant & others of said bondholders, a mandamus was issued by the circuit court for said county of Limestone, commanding said court of county-commissioners to levy & collect taxes for the payment of said bonds, issued under the act of the legislature of Alabama, passed 14 h December, 1855; and in obedience to said mandamus said court of county-commissioners did proceed to levy & collect a tax for the payment of said bonds, but the collection of said tax was presented by an injunction from the chancery court for the fourth district of the northern chancery division of the State of Alabama, issued in a suit then & now pending in said chancery court.

15. It is true that the bonds of said county of Limestone, issued under said act of the legislature of Alabama, passed 14th December, 1855, falling due March 1st, 1860, March 1st, 1861, & March 1st, 1862, have been fully paid. None of the bonds of said county, issued under said act of the legislature, were sold or negotiated by the Tennessee & Alabama Central Railroad Company after said company had executed said mortgage hereinbefore referred to as having been executed by said company about the year 1858. All of the bonds of said county,
101 issued under said act of the legislature of Alabama, which fell due March 1st, 1863, have been fully paid off except about four thousand dollars; and in the year 1867 the said county of Limestone collected by taxation & paid on the bonds of said county, then outstanding & embraced in the mortgage executed by said company, twenty thousand dollars; to which particular bonds said payment was applied, respondent is not able to state with certainty. Respondent does not know & cannot admit that the bonds of which complainant claims to be the owner are wholly unpaid, and, if necessary, requires proof of this allegation.

16. It is true that since the consolidation of the said railroad companies, mentioned in the 16th section of said bill of complaint, the respondent, The Nashville & Decatur Railroad Company have taken & now have the possession of all the property, real & personal, conveyed by said mortgage, & that since said consolidation respondent has been exercising, & is now exercising all the rights, priveleges, & franchises of the said Tennessee & Alabama Central Railroad Company, & claims to be the owner thereof. But the possession of said property by respondent & the said exercise of said rights, privileges, and franchises, & said claim of ownership by respondent, have always

102 been & are now in subordination to all valid liens or incumbrances on said property or on said rights, privileges, & franchises created by the Tennessee & Alabama Central Railroad Company before said consolidation. The respondent, the Nashville & Decatur Railroad Company, has never claimed, & does not now claim, to hold said property, rights, privileges, & franchises, discharged of and freed from lawful liens thereon created by said Tennessee & Alabama Central Railroad Company, but has always in good faith recognized said liens. It is wholly untrue that at the time of said consolidation the debts of the said Central Southern Railroad Company & the said Tennessee & Alabama Railroad Company were equal to the actual value of all the property, real & personal, & all the corporate rights & franchises of the said Central Southern Railroad Company & the Tennessee & Alabama Railroad Company. On the contrary, respondent expressly states that the value of the property & franchises of said corporations did then & do now largely exceed the amount of the debts of the same. At the time of the said consolidation the value of the property & franchises of said Central Southern Railroad Company was not less than one million two hundred & forty-nine thousand four hundred & twenty-nine & $\frac{23}{100}$ dollars,

103 and its liabilities amounted to seven hundred & fifty-six thousand seven hundred & fifty-two $\frac{59}{100}$ dollars. At said time the value of the property & franchises of said Tennessee & Alabama Central Railroad Company was not less than one million nine hundred & seventy-five thousand seven hundred & eighty $\frac{63}{100}$ dollars, and its liabilities amounted to one million three hundred & fifty-five thousand one hundred & sixty-four & $\frac{52}{100}$ dollars. It is true that by the said consolidation the property of the said Tennessee & Alabama Central Railroad Company, conveyed by said mortgage heretofore referred to, has become liable for the payment of the debts of said Central Southern Railroad Company & said Tennessee & Alabama Railroad Company, but said liability is subject to all prior liens and encumbrances on said property lawfully created by said Tennessee and Alabama Central Railroad Company before said consolidation. In like manner by said consolidation, the property of said Central Southern Railroad Company & the Tennessee and Alabama Railroad Company has become liable for the debts of the Tennessee & Alabama Central Railroad Company, but said liability is subject & sub-

104 ordinate to all liens upon said property lawfully created before the consolidation. It is true, as already stated, that the corporate rights & franchises of said Tennessee & Alabama Central Railroad Company are held & claimed by respondent. The allegations by complain't that, by means of said consolidation, the rights & interests of complainant & the other holders of the bonds of said county of Limestone are greatly endangered, is wholly & grossly false. That said allegation is entirely without foundation will fully appear from the following facts, which respondent states by way of a more full & specific answer to said allegation. The security for the payment of said bonds furnished by the mortgage executed about the year 1858, by said company, was not, in any respect, impaired or lessened by said consolidation, but was, in fact, greatly enhanced & improved thereby. The line of the Tennessee & Alabama Central Railroad Company extended from a point on the Memphis & Charleston Railroad, near Decatur, to the line between Tennessee & Alabama, a distance of only twenty-seven miles, & lying entirely in Alabama. The line of the Central Southern & the Tennessee & Alabama Railroads extended from the city of Nashville to the northern terminus of the Tennessee & Alabama Cen-

105 tral Railroad, a distance of about ninety-three miles, making the line of the new company, this respondent, one hundred & twenty miles, besides side tracks. By said consolidation the expense of running the lines & conducting the business of each of said three roads were materially diminished, & this was one of the chief inducements to said consolidation. The superior credit & more extended means of the new company, which succeeded to the right & took the place of the three old corporations, enabled the new company to repair & otherwise greatly improve the property embraced in said mortgage. Since said consolidation the road-bed of said Tennessee & Alabama Central Railroad has been repaired thoroughly, expensive & substantial embankments & culverts have been built, & the bridges have been renewed or improved. The expenditures thus made by respondent in the permanent improvement of said property being not less than sixty thousand dollars. Respondent states that the actual value of the property embraced in said mortgage is much greater now than at the time of said consolidation, & that the increase of value is mainly due to said consolidation, and that the probable prospective increase in the
106 value of said property, as resulting from said consolidation, is very great. The amalgamation of said three companies into one has had a powerful influence in forwarding the project for the construction of a railroad from Decatur to Montgomery, in Alabama, which said railroad is now in process of construction, & will, when completed, greatly enhance the value of the property embraced in said mortgage. The property & franchise now owned and possessed by the respondent are of value far greater than the amount of the debts of respondent, including, in said debts, not only those created by the Nashville & Decatur Railroad since said consolidation, but also all those which it assumed at the time thereof. The total liabilities of said Nashville & Decatur Railroad Company amounted to not more than three million seven hundred & eighty thousand six hundred & five $\frac{24}{100}$ dollars, while the value of the property & franchise of said company is not less than five million two hundred & twenty seven thousand nine hundred & sixty-six $\frac{95}{100}$ dollars. The value of the property & franchise embraced in said mortgage executed by said company about 1858, as before stated, exclusive of the rolling-stock conveyed thereby, is not less than four hundred
107 thousand dollars, & consists of said franchises and real estate and fixtures in said county of Limestone.

17. It is true that respondent, as already stated, has knowledge that a mortgage was executed by said company about the year 1858, but not that said mortgage was as set forth in complainant's bill, & as to whether the said bonds claimed by said complainant are wholly unpaid respondent does not know. The bonds of said county of Limestone embraced in said mortgage now outstanding & unpaid amounts, principal & interest, to about eighty-five thousand dollars, while the value of the property embraced in said mortgage, exclusive of rolling-stock, is, as already stated, not less than four hundred thousand dollars, and consists of said franchises, real estate & fixtures belonging thereto in said county of Limestone. It is true that respondent has not paid said bonds; but it is utterly untrue that respondent avers its inability to do so. Further, the complainant nor any of said bondholders have ever demanded of respondent payment of said bonds, or of any of them, unless the institution of this suit can be considered such demand.

Respondent states that this suit was brought by complainant
108 without any previous notice to respondent, & without making of

respondent any demand for the payment of said bonds claimed by complainant, or informing respondent in any way that complainant intended to look to respondent for the payment of said bonds. On the contrary, before the institution of this suit, it was understood & agreed between most of said bondholders, including said complainant, & the said Nashville & Decatar Railroad Company, that the said bondholders, complainant being one of them, would make the said county of Limestone, the maker of said bonds, pay the same, & that to this end, they would institute legal proceedings to compel said county to make such payment, this respondent agreeing & promising to pay a portion of the expense incurred in the effort to make said county pay said bonds. In pursuance of said agreement and understanding, said bondholders, including the complainant, instituted legal proceedings to compel the payment of said bonds by said county; which said proceedings were pending when this suit was instituted, and are yet pending & undetermined, as already stated in the 14th section of this answer. So far from it being true that respondent avers its inability to pay said bonds, respondent asserts that the assets of respondents are more than sufficient
109 to pay all its liabilities, & repeats the statement already made that while the amount due on said bonds is about eighty-five thousand dollars, the value of the property & franchises, embraced in said mortgage, exclusive of the locomotives & other rolling-stock, is not less than four hundred thousand dollars.

18. It is not true, as alleged, that by said consolidation the respondent has so mingled & confused the locomotives, cars, & other rolling-stock of said Tennessee & Alabama Central Railroad Company by said mortgage conveyed, with the rolling-stock of the other companies that the indentity of the locomotives, cars, & rolling-stock mortgaged as aforesaid is lost. On the contrary, the identity of the locomotives, cars, & other rolling-stock embraced in said mortgage is preserved, and the same can be readily identified and separated from the other rolling-stock owned & possessed by respondent.

For answer to the several interrogatories set forth & numbered in said bill of complaint, respondent says:

1. In answer to 1st interrogatory. Yes.
2. In answer to 2d interrogatory. They were.
3. In answer to 3rd interrogatory. Yes.
4. In answer to 4th interrogatory respondent has not had time
110 to compare carefully the recitals of the provisions of said act as made in said bill with the act itself, & therefore cannot answer this with certainty; but he refers to the copy of said act as showing its provisions.
5. In answer to 5th interrogatory. Yes.
6. In answer to 6th interrogatory. Yes; with this qualification, that said bonds were in the form shown by Exhibit A, filed herewith.
7. In answer to 7th interrogatory respondent says that said legislature did pass an act so entitled. Respondent believes the provisions are correctly stated in said bill.
8. In answer to 8th interrogatory, The Tennessee & Alabama Central Railroad Company did, about the year 1858, execute a mortgage to secure the payment of certain bonds of the county of Limestone issued under said act of the legislature passed 14th December, 1855; but respondent cannot state whether the provisions of said mortgage are correctly recited in said bill.
10. In answer to 10th interrogatory respondent does not know where or in whose custody said original is.

9. In answer to 9th interrogatory, respondent does not know & cannot state.

11. In answer to 11th interrogatory respondent does not know & cannot state.

111 12. In answer to 15th interrogatory: Respondent knows that complainant was, at one time, the owner of some of the bonds of said county, & has been informed that complainant yet claims to own some of said bonds; but respondent does not know whether he is the owner of the particular bonds in said bill described.

13. In answer to interrogatory 13: Respondent does not know.

14. In answer to interrogatory 14th: The consolidation of said companies was made in the manner set forth in the previous part of this answer & more fully shown in the several proceedings and acts in this answer referred to, & included with exhibit herewith, marked (B.)

15. In answer to interrogatory 15th, respondent says: That whether by such consolidation the corporate existence of the said Tennessee & Alabama Central Railroad Company became merged in that of the Nashville & Decatur Railroad Company is, a' respondent is advised, a question of law & not of fact, & which it is the province of the court to determine.

16. In answer to interrogatory 16, respondent says: That, said Nashville & Decatur Railroad Company is now, & has been since said consolidation, in the exclusive possession of all the property, real & per-

112 sonal, and all the franchises by said mortgage conveyed, subject however, & in subordination to all lawful liens created thereon by said Tennessee & Alabama Central Railroad Company before said consolidation.

17. In answer to interrogatory 17, respondent says: That, since said consolidation, said Nashville & Decatur Railroad Company has held & is now holding all said property, real & personal, as the sole & exclusive owner, subject, however, to all lawful liens thereon, created by said Tennessee & Alabama Central Railroad Company before said consolidation, & that it is taking the income & profits of said property to its own use.

18. In answer to interrogatory 18th: Yes.

19. In answer to interrogatory 19: Respondent has already answered as fully as it can. Respondent has been informed that complainant holds some of the said county bonds, but which, & how far unpaid, respondent does not know.

20. In answer to interrogatory 20 respondent says: That, by such consolidation, the property which was mortgaged by the Tennessee & Alabama Central Railroad Company, about 1858, as before stated, has become liable for the debts of the said other two railroad companies, subject, however, to any prior lien thereon created by the Tennessee & Al-

113 abama Central Railroad Company before said consolidation. The indebtedness of the said Central Southern Railroad Company & the said Tennessee & Alabama Railroad Company, is, in the aggregate, two million one hundred & eleven thousand nine hundred & seventeen & $\frac{11}{100}$ dollars. The value of the property, real & personal, of said two last-named companies & which was owned by the respondent, is three million two hundred & twenty-five thousand two hundred & nine $\frac{86}{100}$ dollars, & the estimate of the value of said property does not include but excludes the value of the property, real and personal, of said Tennessee & Alabama Central Railroad Company embraced in said mortgage.

For further answer to said bill of complaint, respondent states, that respondent is informed & believes, & on such information & belief so states the facts to be, that before & at the time of the said consolidation of said three companies as hereinbefore stated, all of the persons then

holding & owning any of the said bonds of said county of Limestone then outstanding, well knew of said proposed consolidation & of the terms & conditions thereof, & that said consolidation was made & con-
114 cluded with the knowledge & consent of said bondholders, including complainant, actively encouraged & promoted said consolidation.

For further answer to said bill of complaint, respondent is informed & believes, & on such information so states the fact to be, that all of the outstanding & unpaid bonds of said county of Limestone, so issued on the 14th day of February, 1857, in pursuance of the said act of the legislature of Alabama, passed December 14, 1855, other than said bonds of which complainant by his said bill claims to be the owner, are now & were when this suit was instituted, held & owned, not jointly, but separately by the following persons & no others, to wit: Edward W. Grigsby, Thomas Redas, Robert L. Bridgforth, J. B. Haney, James P. Sims, John P. Grigsby, James Henderson, Tanner & Newell (which firm is composed of John T. Tanner & William B. Newell,) Thomas S. Malone, William B. Newell, Jonathan Fisher, John D. Rather, William M. Byrd, (as trustee for the children of William T. Allen,) James M. Lane, Fanny Bucford, Jonathan Orr, William H. Walker, & William H. Pritchett, each of said persons or firms above-mentioned holding separately a portion of said bonds, but the precise number & amounts of said bonds so held
115 by each of said persons or firms, respondent does not know & cannot state. Respondent further avers & states, that each & all of the above-mentioned holders & owners of said outstanding bonds, except the said William H. Pritchett, are, & were when this suit was instituted, citizens of the State of Alabama; & respondent is informed & so states, that the only one of said bonds so held by said W'm H. Pritchett, is a bond for five hundred dollars, & that said Pritchett is a citizen of the State of Georgia. Respondent is informed & believes, & so states, that if the names & residencies of the said holders of said outstanding bonds were unknown to complainant when this suit was instituted, (& respondent believes that in fact complainant did then know the names & residences of most, if not all, of said bondholders,) yet complainant could readily have ascertained the names & residences of all of said bondholders.

And now, having fully answered said bill, respondent prays to be hence dismissed with costs, &c.

This answer is here now signed by the said defendant, The Nashville & Decatur Railroad Company, by James W. Sloss, the president
116 thereof, & countersigned by George W. Seay, the secretary of said company, & by the authority & direction of James W. Sloss, president & chief executive officer of said company, the common seal of said Nashville & Decatur Railroad Company is herewith affixed.

[SEAL.] NASHVILLE & DECATUR RAILROAD COMPANY,
By J. W. SLOSS, *President.*
G. W. SEAY, *Sec.*

HOUSTON & PRYOR,
ROBINSON & WALKER,
Sol's for Nash. & Decatur R. R. Company.

Before me, Lionel W. Day, clerk of the district court of the United States for the northern district of Alabama, this day personally appeared James W. Sloss, who, being duly sworn, says that he is the president of the Nashville & Decatur Railroad Company, one of the defendants in

the above stated suit, and as such, has the chief control & management of its affairs, & has knowledge of its acts & transactions ; that the statements made in the foregoing answer, as upon the knowledge of said Nashville & Decatur Railroad Company are true, & those made upon information & belief, he believes to be true.

J. W. SLOSS.

Subscribed & sworn to before me, this the 25th of May, 1870.

LIONEL W. DAY,
Clk D. C.

117 (Indorsed :) No. 71. John C. Orr vs. Nashville & Decatur Railroad Co., & Limestone Co. Answer of N. & D. R. R. Co. Filed May 26, 1870. Lionel W. Day, cl'k D. C.

118 *Ex. B. to answer.—Organization of the Nashville & Decatur Rail road Company.*

NASHVILLE, *June* 28, 1866.

The executive committee of the Nashville & Decatur Railroad line met at Nashville this day. Present, J. A. Sloss, president, & Messrs. Claybrooke & Mortin.

The object of the meeting being to consider terms of amalgamation of the three roads, after much deliberation, it was agreed to submit the following articles to the consideration of the directors of the three roads, &, if approved by them, to be submitted also to their stockholders, as provided for in the enabling act passed by the last legislature.

"BASIS OF CONSOLIDATION."

With a view to the consolidation of the stock of the Tennessee & Alabama Railroad Company, the Central Southern Railroad Company, & the Tennessee and Alabama Central Railroad Company into The Nashville & Decatur Railroad Company, it is understood & agreed as follows, to wit:

1st. That the bona-fide stockholders in said companies shall sur-
119 render the stock that has been, or may be, issued to them, to said Nashville & Decatur Railroad Company, and receive an equal amount of stock thus surrendered in The Nashville & Decatur Railroad Company.

2nd. That the said Nashville & Decatur Railroad Company assumes the payment of all liabilities of the said companies.

3rd. That all the rights, titles, franchises, & assets of every kind & character, owned & held by the said companies, shall be held, owned, & used by the Nashville and Decatur Railroad Company.

4th. That the said roads, with their assets, shall be valued, said valuation to be ascertained by three (3) competent men, to be appointed by the three presidents of said roads; or it may be ascertained by agreement of the executive committee, as they may determine.

5th. That the property put into The Nashville & Decatur Railroad line by the several companies shall be taken into the account of each company, at the same valuation put upon it when taken by said line.

6th. That the liabilities of said companies, when ascertained, shall be charged to the account of said companies respectively, & the
120 valuation of the roads & assets shall be credited to the roads respectively.

7th. To equalize the stock of the stockholders in the several companies, after ascertaining the valuation & indebtedness of each company, if it shall be found that the indebtedness of either company shall exceed its valuation, thereby causing a deficit, & that the valuation of either company shall exceed its indebtedness, thereby causing an excess to such company, then the company having such excess shall have issued to its stockholders certificates of stock for the proportion required to put them upon an equality, in stock, with the stockholders in the other roads.

8th. That the net earnings of The Nashville & Decatur Railroad shall be used in the liquidation of its indebtedness, &, after providing for the bonds & U. S. debt, the residue shall be paid upon the indebtedness of the several companies in the proportion as follows: Tennessee & Alabama, 31-65; Central Southern, 21-65; & the Tennessee & Alabama Central, 13-65, it being understood & agreed, however, that, as far as practicable, The Nashville & Decatur Railroad Company shall take up & assume the payment of the liabilities of the several companies.

121 9th. It is understood that the Mount Pleasant branch is a part & parcel of the Tennessee & Alabama Railroad, & that, at present, it has no cross-ties or rails; in fact, the Federal Government, during the war, removed the entire superstructure, for which damage the Tennessee & Alabama Railroad Company have made application to the Government for the necessary sum to pay said damages, &, when paid, the same shall be paid over to The Nashville & Decatur Railroad Company, as a part of the assets, to carry out in good faith all the obligations of the Tennessee & Alabama Railroad Company, as required by the charter.

10th. That it is also understood & agreed that the unpaid subscriptions due to each company shall be left with the respective companies, to dispose of as they may determine, & that in no case will either company issue certificates of stock to any subscriber, except for cash actually paid in.

And the committee adjourned.

J. W. SLOSS, *President.*

JOHN BAIRD, *Secretary.*

122 NASHVILLE, *October* 23*d*, 1866.

The time of meeting having been postponed by consent to the 23 inst., the executive committee met at Nashville this day.

Present, Mr. Sloss, president, & Messrs. Claybrook, Mortin, & Pork.

The question of consolidation was again taken up, & after consideration & discussion the following resolution was adopted as a fair & equitable settlement of the questions involved:

Resolved, That, under the authority delegated to the executive committee by the respective stockholders of the Tennessee & Alabama, Central Southern, & Tennessee & Alabama Central Railroad Companies, the committee have agreed that the capital stock of each company shall represent the value of its road; & that, therefore, each of the companies herein mentioned shall surrender to The Nashville & Decatur Railroad Company all of its rights, franchises, & property; the Nashville & Decatur Railroad Company assuming to pay all debts owing by the several companies, & being hereby especially pledged to protect all persons who have made themselves individually liable for the debts of any of the several companies, & that the stockholders of each

company shall be entitled to & receive credit for the same amount
123 of stock in The Nashville & Decatur Railroad Company that they own in any of the several companies, this constituting and comprising the whole basis of settlement.

Resolved, That, under this agreement, the stockholders of the Tennessee & Alabama, & the Central Southern Railroad Companies, meet at Columbia, the 3rd Wednesday in November next, for the election of directors in The Nashville & Decatur Railroad Company, as provided for by the enabling act passed by the legislature of Tennessee.

And the committee adjourned.

J. W. SLOSS, *President.*

J. BAIRD, *Secretary.*

124 *Proceedings of the convention of railroad stockholders.*

COLUMBIA, *Nov.* 21, 1866.

Pursuant to appointment the stockholders of the Tennessee & Alabama Central Railroads met in Columbia, on the the 21st day of November, & Judge Whitworth, of Nashville, was called to the chair, & Hunter Nicholson appointed secretary.

At the request of the chairman, Mr. Sloss, of the Tennessee & Alabama Central Railroad, explained the object of the meeting to be—

1st. The consolidation of the Tennessee and Alabama, & the Central Southern Railroads.

2nd. The consolidation of those two roads with the Tennessee & Alabama Central Railroad under the name & style of the Nashville & Decatur Railroad, in pursuance with the enabling act of the legislature of Tennessee, which Mr. Sloss read to the convention. By this act the executive committee were empowered to make terms of consolidation, which had been accomplished.

On motion of Maj. Thomas W. Jones, the chairman appointed Messrs. Donnell, Thompson, & Turner, judges, & J. B. Alderson & W. W. Phillips, clerks, to hold an election for directors in the consolidated Tennessee & Alabama Central Southern Railroad.

125 The judges having been qualified, the election was held & resulted in the following board of directors: J. S. Claybrooke, W. Pork, Sam Henderson, James Andrews, John McGavock, C. W. Nance, Thomas Mortin, Albert Buford, Newton White, C. P. Reed, John Ballaufaut, C. N. Ordway, W. O. N. Perkins, Thomas M. Jones, & James Whitworth, who were duly sworn in, & the stockholders' convention adjourned until the action of the newly-elected board of directors could be had.

Upon the re-assembling of the convention, Mr. Hardeman, as secretary of the board of directors for the consolidated roads, reported to the convention the action of that board to the effect that the terms of consolidation between the Tennessee & Alabama, the Central Southern, & the Tennessee & Alabama Central Railroads, as agreed upon by the executive committee, & as accepted by Mr. Sloss, in behalf, & as the authorized agent, of the Tennessee & Alabama Central Railroad, were accepted & confirmed by the consolidated board, & their action was submitted for the ratification of the convention.

On motion of Maj. Thomas M. Jones, the action of the board was unanimously confirmed by the convention, & the three (3) roads
126 declared to be united and consolidated under the style of The Nashville & Decatur Railroad.

Maj. Jones moved that the convention proceed to the election of a board of directors for the Nashville & Decatur Railroad, for the year 1867.

Mr. Sloss offered the following:

Whereas, the shares in the Tennessee & Alabama Central Railroad Company represent, under its charter, but twenty-five ($25) dollars each, while the shares in the Central Southern & Tennessee & Alabama Railroad Companies represent fifty dollars ($50) each, therefore be it

Resolved, That the stockholders in this convention, holding shares in the Central Southern & in the Tennessee & Alabama Railroad Companies, shall be entitled to vote twice the number of their shares so as to equalize them in numbers with the stockholders in the Tennessee & Alabama Central Railroad Company.

After much discussion, Mr. Bond offered the following resolutions in lieu:

Whereas, in the Tennessee & Alabama & in the Central Southern Railroad Companies, a share of stock is ($50) fifty dollars, & in the Tennessee & Alabama Central Railroad Company it is ($25) twenty-five dollars, and

127 Whereas, in the election about to take place for directors of the Nashville & Decatur Railroad, when the number of votes is regulated by the number of shares,

Resolved, That in this election ($50) fifty dollars will be regarded & recognized as one share of stock & each stockholder will be required to vote accordingly.

Whereupon, Mr. Nance introduced the following, in lieu of the whole:

Resolved, That this stockholders' meeting proceed to elect a board of directors; that every twenty-five dollars of stock shall entitle the holder to one vote in all the original companies, now merged into the Nashville & Decatur Railroad Company.

Adopted; ayes, 38; Noes, 22.

Mr. Rose offered the following resolution, which, after considerable discussion, was adopted.

Resolved, That this stockholders' convention adopt for its present guidance, & until otherwise determined, that the directors shall be elected & selected from the following-named counties, & in the proportion as follows, to wit: Davidson, 2; Williamson, 3; Maury, 2; Giles, 4; Limestone, 3; Morgan, 1; total, 15.

128 Mr. Claybrook moved the consideration of salaries; which was adopted.

Dr. Stout moved that the salary of the president be fixed at five thousand dollars per annum.

Dr. Stout having, by request, withdrawn his motion, Mr. Sloss moved a reconsideration of the resolution for fixing the salaries, which motion having been adopted, Maj. Jones moved to lay the resolution on the table, for the purpose of entering into an election of directors. The motion was adopted, & an election ordered for a board of directors, to be organized 1867.

The chairman appointed Messrs. Abernathy, Ordway, & Tanner, judges; & Messrs. Edmonson & Stout, clerks, to hold the election.

The judges & clerks reported the following as the result of the election, & their report was accepted & ordered to be entered upon the minutes of the convention:

DIRECTORS.—J. S. Claybrooke, Jno. McGavock, James Whitworth, W. O. N. Perkins, Jno. Ballonfant, T. M. Jones, Geo. S. Houston, James T. Tanner, Jno. Fisher, C. N. Ordway, C. W. Nance, W. P. Cannon, Tho's Mortin, Albert Buford, & J. W. Sloss.

129 Mr. Sloss then submitted the following preamble & resolutions, which were adopted:

Whereas, in the consolidation which has this day been effected & confirmed, the Tennessee & Alabama Central Railroad Company has been brought & received into the aforesaid consolidation, with the full understanding as per resolutions passed by the stockholders of said company, on the 22d of August, 1866, & it is so intended & accepted, that the consolidation of the several companies with the Nashville & Decatur Railroad Company, does not & shall not in any wise invalidate or impair any of the franchises, forms, rights, & privileges, & interests in & to property, real, personal, or mixed, which have vested, or which could, should, or might hereafter vest or accrue to the same & which have vested, or might, could or should vest or accrue to the Tennessee and Alabama Central Railroad Company, & it is hereby understood & declared, & so intended, that all the rights in, to, or of property vested or which might vest or accrue to the said Tennessee & Alabama Railroad Company, of any kind, & description, & amount, whatever, is retained & carried with & by the said consolidation with the said
130 Nashville & Decatur Railroad Company, & by the said Nashville & Decatur Railroad Company to be as freely enjoyed & enforced as if done by the said Tennessee & Alabama Central Railroad Company, & hereby having reference to all the franchises, forms, privileges, & immunities of, in, & to property aforesaid, whether under the seveal laws of Alabama, as well as the laws of the Congress of the United States, in 1856, or those that may hereafter be passed touching or referring to the appropriation of alternate sections of land to the Tennessee & Alabama Central Railroad Company, retaining & carrying with said consolidation, the rights to said lands as completely & fully, together with all the benefits of all laws passed by Alabama & the United States for the said Nashville & Decatur Railroad Company, to have & enjoy, secure & enforce the same for its benefits, as fully as the said Tennessee & Alabama Central Railroad Company might, could, or should do; therefore, be it—

Resolved, That the extension of the road south of Decatur, is of the first importance to this company, & it is our duty & interest to foster & protect the same, & to adopt some plan by which its construction
131 may be consum'ated, & that a committee of three (3) be appointed to memorialize the legislature of Tennessee, to authorize the directory of this company to issue its bonds to an amount not exceeding one million dollars, for the purpose of aiding in the construction of the road from Decatur to Line Station, Alabama, or to indorse the bonds of any other company undertaking its construction, or to adopt any other means in their power to secure this end. And the directory are hereby empowered, required, & instructed, to carry out this resolution in good faith, as far as possible with safety to this company.

Mess. Jno. Baird, C. W. Ordway, & J. S. Claybrook, were appointed a committee to memorialize the legislature of Tennessee.

And the convention adjourned sine die.

J. WHITWORTH, *Chairman.*

H. NICHOLSON, *Secretary.*

(Endorsed;) "Exhibit B" to answer. Filed May 26, 1870. Lionel W. Day, clerk D. C.

132 *Limestone County bond.*

$1,000.] COUNTY BOND. [No.

The county of Limestone, in and of the State of Alabama, is held, and firmly bound unto, and hereby binds and obligates itself, on the 1st day of March, , to pay, at the office of the judge of probate in said county, to the Tennessee & Alabama Central Railroad Company, its order or assigns, one thousand dollars, for value received.

In testimony whereof, we, the undersigned commissioners of the court of county commissioners of the said county and State, this the 14th day of February, A. D. 1857, sign our names, and affix the seal of said county in the presence of Thomas G. Tyns, judge of probate, Limestone County, Alabama.

(Signed) JOHN R. HARRIS,
THOMAS REDUS,
JIM. HENRY MALONE,
ANDREW C. LEGG,
Commissioners.

I, Thomas G. Tyns, judge of the probate court, county of Limestone, State of Alabama, sitting as the president of the court of county commissioners, in and for said county & State, hereby certify that the above and foregoing bond of the county of Limestone, State of Alabama, payable on the 1st day of March, , to the Tennessee & Alabama Central Railroad Company, its order, or assigns, for the sum of one thousand dollars, at the office of the judge of the probate court in said county & State, and bearing date the 14th day of February, 1857, was, on the day the same bears date, in open court, and in my presence, signed by John R. Harris, Thomas Redus, Jim. Henry
133 Malone, and Andrew C. Legg, commissioners of the court of county commissioners, in and for the county of Limestone, State of Alabama, duly elected & qualified, being the whole number elect, and to whose act full faith and credit is due.

In testimony whereof I, this the 14th day of February, 1857, do sign my name, and affix my seal of office, in pursuance of an act of the legisture of the State of Alabama, passed on the 14th day of December, 1855.

(S'g'd) THOMAS G. TYNS,
Judge of Probate, Limestone Co., Ala.

For value received, the Tennessee & Alabama Central Railroad Company, hereby transfers all right, and title, and interest, of the within bond (the same being bonds secured by a first-class mortgage on the assets of the said company) to John C. Orr, or bearer.

Athens, July 29th, 1858.

JA'S W. SLOSS, *Pres'd't.*

(Endorsed;) Exhibit A to answer. Filed May 26th, 1870. Lionel W. Day, clerk D. C.

Mortgage of Alabama & Tennessee Central R. R. Co.

BOND.

Tenn. & Alabama C. Railroad Company. Bond to the United States of America.

Know all men by these presents that the Tennessee & Alabama Central Railroad Company, duly incorporated by the act of the general

assembly of the State of Alabama, by Ja's W. Sloss, its president, acting for and in behalf of said railroad company, do hereby acknowledge itself and its successors held and firmly bound unto the United States of America, in the full and just sum of one hundred & seventy thousand eight hundred & forty-three $\frac{94}{100}$ dollars, lawful money of the United States, for which payment, well and truly to be made to the disbursing quartermaster of the United States military railroads, at his office in Nashville, or to such other disbursing quartermaster as may be designated by the War Department, within two years from the date of these presents, the said railroad company, by its president, hereby binds itself and its successors, firmly by these presents, sealed with its corporate seal, attested by the signature of its president, and affixed by the express authority of its directors, this the first day of January, A. D. 1866.

The nature of the above obligation is such that whereas the above-bounden railroad company has purchased and received, or shall receive, from the War Department of the United States, rolling stock, iron rails, cross-ties, chairs, spikes, timber, & other materials, for repairing and operating its railroad, in quantities, at prices, and to an amount
135 & value which shall be evidenced by the receipts given for the same by said railroad company to the proper officer of said War Department, upon a credit of two years from the date of these presents, payable in equal monthly instalments, with interest at the rate of $7\frac{3}{10}$ per annum, within the said two years, either in cash to the disbursing quartermaster of the United States military railroads, at his office in Nashville, or to such other disbursing quartermaster of the United States military railroads as may be designated for this purpose by the War Department, or in transportation of the troops or military supplies of the United States under the orders of the proper military authority, at the rates of fare & tolls allowed for such service to northern railroads; and whereas the said railroad company desires, and, by these presents, intends, to secure to the United States the complete and punctual payment as aforesaid of the amounts which may be due for the said materials received or to be received by it from the United States: Now, therefore, if the said railroad company shall well and truly pay as aforesaid, either in cash or equal monthly instalments, or in transportation, as aforesaid, to the United States, within two years from the date of these presents, all that shall be due, as aforesaid, to the United States, on account and in payment for all the materials received as aforesaid from the United States, then this obligation shall be void and of no effect. But if the said railroad company shall fail to pay to the United States, all or any portion of what may be due to the United States on account of the said material received from
136 the United States within two years from the date of these presents, either in cash as aforesaid or in transportation as aforesaid, or shall fail to pay any of the monthly instalments aforesaid, punctually when due, then this obligation shall remain in full force and effect to the extent that may be necessary to fully repay to the United States for the full amount which may be due on account of the said materials so received as aforesaid; and all loss or damage which may have been incurred by the United States by reason of the said railroad company's failure to pay for the same what shall be due therefore when the same shall be due. And as a further security for such payment and indemnity to the United States, the United States shall have a lien upon the property sold to said company, and in default of such complete and punctual payment of all moneys which may be due on account of

the aforesaid purchace of materials, be fully authorized to take possession of and sell said property, and also to place in charge and control of the said company's railroad an agent of the said United States, who shall be fully empowered, and by these presents is fully empowered, in case of such default as aforesaid, to collect all the revenues of the said company, and apply the same to the payment to the United States of all the moneys which shall be due at the time of such application of such revenues to the United States, for any such materials which shall have been delivered by the United States to the said railroad company,
137 or by reason of any loss or injury to the United States resulting from such default in payment of the same. And the said company shall have no authority to sell or convey out of its possession, without the consent of the United States, first in writing obtained, any of the property referred to in this agreement, but shall hold and retain the same to the exclusive use of said company in carrying on the business of transportation of persons and property over its line of road until the whole is fully paid for as aforesaid. In witness whereof, the corporate seal of said company is affixed hereto by authority of its directors and attested by its president.

TENNESSEE & ALABAMA CENTRAL RAILROAD COMPANY,
[SEAL.] By JA'S W. SLOSS, *President.*

Witness:
JNO. T. TANNER, *Sec. & Treas'r.*

STATE OF ALA., *Limestone Co.:*

I, John B. McClellan, judge of probate in and for said county & State, hereby certify that the foregoing bond was filed in my office for record on the 1st of January, 1866, and was duly recorded on the same day in deed-book No. 11, pages 66, 67, 68, & 69.

JNO. B. McCLELLAN, *Judge P. C.*

THE STATE OF ALA., *Limestone Co.:*

I, Joshua P. Coman judge of the probate court for said co. & State, hereby certify that the foregoing transcript, from pages one to six,
138 inclusive, is a correct, true, & complete transcript of a bond (together with the certificate of record,) given by the Tennessee & Alabama Central Railroad Company to the United States of America, as found in the records in my office, in deed-book No. 11, pages 66, 67, 68, & 69.

In witness whereof I hereunto set my hand & affix my official seal, on this 23d day of May, A. D. 1870.

[SEAL.] JOSHUA P. COMAN, *Judge P. C.*
[Stamp.]

(Endorsed:) Exhibit O to answer. Filed May 26, 1870. Lionel W. Day, clerk D. C.

139 *Plea.*

In the district court of the United States for the northern district of State of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY, & Limestone County, in State of Alabama. } In chancery.

The defendant the Nashville & Decatur Railroad Company, by pro-

testation, not confessing or acknowledging all or any of the matters & things in said complainant's bill of complaint mentioned & contained to be true, in such sort, manner, & form as the same are therein set forth and alleged, for plea to so much & such part of said bill as alludes & charges that said complainant sues for himself & all the other' the holders of bonds of the county of Limestone, in the State of Alabama, secured by the mortgage thereafter mentioned, who may come in and seek relief by & contribute to the expenses of this suit; and to so much and such parts of said bill as alleged and charged that, on the 29th of July, 1858, the said Tennessee & Alabama Central Railroad Company, by its deed of that date, granted, bargained, sold, aliened, released, & confirmed unto Jonathan McDonald, James W. Sloss, Booth M.
140 Jones, Henry W. Fennell, James W. Allen, W'm T. Allen, Thomas Redus, Benjamin H. Grigsby, Jno. C. Orr, William W. Phillips, Luke Pryor, Robert C. Brickell, Andrew C. Legg, John J. Howard, their heirs and assigns, administrators, executors, and transferees, forever, all that tract of land comprising the road of said company, with all hereditaments & appertainances thereto belonging, fixtures attached, then existing or thereafter acquired, all the iron, whether of rails, chairs, or spikes, all of all kinds & amounts, all of its structures of all kinds, its depots, & the land upon which the same are built, & all & every part & parcel of the same, & everything thereto attached, locomotives, cars, rolling-stock of every kind, subscription-stock, books, notes, bonds, & choses in action, due & owing, & all the estates, rights, title, interest, or property, possession', claims, demands of said company, whether real, personal, or mixed, in law or equity, & all its chartered rights, powers, privileges & franchises. The consideration of said deed is therein expressed & recited as follows, viz: That said company had sold
141 and assigned to the grantors & mortgagees in said deed named, bonds of the county of Limestone, issued and delivered to said company to amount and description following, viz; To said Jonathan McDonald, bonds to the amount of fifteen thousand ; to said James W. Sloss, bonds to the amount of five thousand dollars; to Booth M. Jones, bonds to the amount of five thousand dollars; to said Henry W. Fennell, bonds to the amount of ten thousand dollars; to said James W. Allen, bonds to the amount of five thousand dollars; to said William T. Allen, to the amount of five thousand dollars; to said Thomas Redus, bonds of the amount of ten thousand dollars; to said Benjamin M. Grigsby, bonds to the amount of ten thousand dollars; to John C. Orr, complainant, bonds to the amonnt of ten thousand dollars; to said W'm W. Phillips, bonds to the amount of five thousand dollars; to said Luke Pryor, bonds to the amount of five thousand dollars; to said Robert C. Brickell, bonds to the amount of five thousand dollars;
142 to said Andrew C. Legg, bonds to the amount of ten thousand dollars; to said John J. Howard, bonds to the amount of twenty thousand dollars. By said deed it is recited that said bonds were purchased by said grantees & mortgagees, on the promises & agreement of said Tennessee & Alabama Central Railroad Company, that the payment of said bonds should be secured by the guaranty of said company, & by a lien or mortgage on the entire assets of said company, including its right of way, road-bed, iron, depots, rolling-stock, subscription, and all & everything belonging thereto: therefore, said deed was made. Said deed is subject to the following conditions therein expressed: That if said county of Limestone should pay off said bonds as they fell due, then said deed to be void; but if said county of Limestone should fail & refuse to pay said bonds or any of them, on presentation at maturity, then and in that case the holders of such bonds were authorized to take

all necessary steps to foreclose said mortgage. This defendant
143 pleads thereto, & for plea says that, each and all of the said bonds which are outstanding and unpaid, so mentioned in [said bill of complaint,] (& secured by said deed of mortgage,) except such of said bonds as are now held & owned by complainant, & except one of said bonds for five hundred dollars, which is held and owned by William H. Pritchett, who resides in Georgia, are now [and were when said bill of complaint was filed,] held & owned, separately & for different sums by each, but the number & sums by each is unknown to defendant, by the following persons, to wit: John D. Rather, Jonathan Orr, Jonathan Fisher, W'm M. Byrd, (as trustee for the children of William T. Allen,) W'm H. Walker, Thomas Redus, William B. Newell, Tanner & Newell, (which firm is composed of John T. Tanner & William B. Newell,) J. B. Haney, James M. Lane, T. S. Malone, Edward W. Grigsby, Robert L. Bridgeforth, James P. Sims, John P. Grigsby, James Henderson, & Fanny Binford. And this defendant doth aver that each & all of the aforementioned holders & owners of said bonds, except complainant & said Pritchett, are citizens of the State of Alabama, and
144 reside therein, & were such citizens when said bill was filed; all which this defendant doth aver is true.

Therefore, this defendant doth plead the citizenship & residence of said bondholders, as before set out and recited, to so much of complainant's said bill as hereinbefore & particularly mentioned & set out, & prays the judgment of this court whether defendant should be compelled to make any further answer to complainant's said bill, and prays to be dismissed hence with its costs, &c.

HOUSTON & PRYOR,
ROBINSON & WALKER,
Sol's for Railroad.

We, the undersigned, counsel for the defendant, The Nashville & Decatur Railroad Company, do hereby certify that, in our opinion, the plea above pleaded by said defendant is well founded in point of law.

HOUSTON & PRYOR,
ROBINSON & WALKER,
Counsel for said Railroad Co.

This day personally appeared before me, Lionel W. Day, clerk of
145 the district court of the United States for the northern district of Alabama, James W. Sloss, who, being sworn, says that he is the president of said Nashville & Decatur Railroad Company, the defendant in the above-stated suit, and as such has control & management of its affairs, and has knowledge of its affairs; and further states that plea by said defendant pleaded is true in point of fact, and that it is not interposed for delay.

J. W. SLOSS.

Subscribed and sworn to before me this the 25th day of May, 1870.
LIONEL W. DAY, *Clerk D. C.*

(Endorsed:) Filed May 26th, 1870. Lionel W. Day, clerk D. C.

146 *Notice of motion for a receiver.*

In district court of the United States for the northern district of Alabama.

JOHN C. ORR, COMPLAINANT,
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR Railroad Company, defendants.

The defendants are notified that, on Monday, May 30th, 1870, at the court-room of the district court of the United States for the middle district of Alabama, in the city of Montgomery, the complainant will move the Hon. Richard Busteed, judge of the district court of the United States for the middle district of Alabama, to appoint a receiver to take charge of and hold the estate, real and personal, described in complainant's bill as having been mortgaged by the Tennessee & Alabama Central Railroad Company to secure the payment of the bonds of the county of Limestone, in said bill mentioned and described.

WALKER & BRICKELL,
Sol's for Compl't.

(Endorsed:) Original notice. Executed by leaving copy with J. P. Coman, judge of probate of Limestone County, and with B. M. Lowell, agent of the Nashville & Decatur Railroad Company, having charge of the office and depot of said company at Athens, Alabama, May 24, 1870.

E. E. DOUGLASS,
Marshall,
By his deputy, WILLIAM H. LEUTZ.

Filed May 25, 1870.

LIONEL W. DAY, *Clerk D. C.*

147 *Agreement of counsel.*

In district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR R. R. COMPANY and County of Limestone.

It is agreed in this cause that the plea filed by the defendant, the Nashville & Decatur R. R. Company, shall not set aside or prejudice the demurrer filed by said defendant, and that the answer filed by said defendant shall not prejudice, set aside, or overrule the said plea or demurrer. The said plea & answer have been filed under this agreement, and in order to facilitate the hearing of the motion of complainant for the appointment of a receiver.

May 26th, 1870.

WALKER & BRICKELL,
For Compl't.
ROBINSON & WALKER,
For Def'd't.

(Endorsed:) Filed May 27th, 1870. Lionel W. Day, clerk D. C.

148 *Notice for a receiver.*

In chancery. District court of the United States, northern district of Alabama.

JOHN C. ORR, COMPLAINANT,
vs.
NASHVILLE & DECATUR RAILROAD COMPANY *Company* and the County of Limestone, defendants.

The defendants are notified that, on Friday, the 20th day of May, 1870, the complainant will move the district court of the United States

for the northern district of Alabama, sitting at Huntsville, for the appointment of a receiver, to take charge of and hold during the pendency of this suit the property mortgaged by the Tennessee and Alabama Central Railroad Company, to secure the payment of the bonds of the county of Limestone, mentioned in complainant's bill, of which property the defendant The Nashville & Decatur Railroad Company now has possession.

WALKER & BRICKELL,
Sol's for Compl't.

(Endorsed:) Executed the within notice by leaving copy with J. W. Sloss, president of the N. & D. Railroad Co., this 23d day of May, 1870.

E. E. DOUGLASS, *Marshall*,
By his deputy, W. J. FRANKS.

Executed on the county of Limestone by handing copy to J. P. Coman' judge of probate, May 19, 1870.

E. E. DOUGLASS, *Marshall.*

Filed May 16th, 1870.

LIONEL W. DAY, *Clerk D. C.*

149 *Motion for receiver overruled.*

In the district court of the United States for the northern district of Alabama. In equity.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMpany and County of Limestone, in the State of Alabama.

In the above-entitled cause, the complainant having made a motion for the appointment of a receiver, and the said motion having been set for hearing before me, on the 30th day of May instant in the city of Montgomery, and the same having been fully heard and considered, it is now ordered that said motion be overruled.

Montgomery, May 31st, 1870.

RICHARD BUSTEED, *Judge, &c.*

(Endorsed:) Motion to appoint receiver denied. Filed in clerk's office northern district of Alabama, U. S. district court, June 10th, 1870. Lionel W. Day, clerk D. C.

150 *Replication of compl't to answer.*

United States of America, district court northern district of Alabama. In equity.

JOHN C. ORR, COMPLAINANT,
vs.
THE NASHVILLE & DECATUR RAILROAD COMpany and the county of Limstone, defendants.

The replication of the complainant, John C. Orr, to the answer of the defendant, "The Nashville & Decatur Railroad Company."

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said an-

swer, for replication thereto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

WALKER & BRICKELL,
Sol's for Compl't.

151 *Decree pro confesso vs. Limestone County.*

District court of the United States, northern district of Alabama. In equity.

JOHN C. ORR, COMPLAINANT,
vs.
NASHVILLE & DECATUR RAILROAD COMPANY,
County of Limestone, defendants.

Comes the complainant, by his solicitors, and asks that a decree pro confesso be entered against the defendant, "The County of Limestone," upon whom subpœna to answer, by service thereof on the judge of the court of probate of said county, has been duly had, and who has not appeared, pleaded, demurred or answered to complainant's bill: It is therefore ordered and adjudged, that complainant's original bill be in all things taken as confessed by said defendant.

(Endorsed:) Entered 1st Monday in August, 1870. Lionel W. Day, clerk D. C.

152 The President of the United States of America to the marshal of the northern district of Alabama, greeting:

We command you to summon Luke Pryor, James W. Sloss, & John T. Tanner, to be and appear before Lionel W. Day, examiner in chancery, the district court of the United States of America for the northern district of Alabama, on the 22d day of April, 1871, at his office in the city of Huntsville, in said district, then and there to testify and the truth to speak, in a certain matter of controversy pending in said court, wherein John C. Orr is plaintiff, and Nashville & Decatur Railroad Company & County of Limestone, defendants, in behalf the said plaintiff. And this they shall in no wise omit, under the penalty prescribed by law.

Witness my hand and seal of said court, this the 10th day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

[SEAL.] Attest: LIONEL W. DAY, *Clerk D. C.*

Issued 10th day of April, 1871.

153 (Endorsed:)

"I hereby authorize W. L. Dyer to serve these subpœnas.
E. E. DOUGLAS, *U. S. Marshall.*"

"Executed by handing a copy to Sloss, Pryor, & Tanner, this 21st of April, 1871.

E. E. DOUGLASS, *Marshall*,
Per W. L. DYER.

Filed April 22d, 1871.

LIONEL W. DAY, *Clerk D. C.*

154 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY & County of Limestone.

On this 16th day of May, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes JOHN T. TANNER, a witness for the complainant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by Rob't C. Brickell, esq., solicitor for the complainant, and in the presence of Robinson & Walker, solicitors for the defendant, whereupon said witness deposes and says:

To int. 1. Do you know the complainant in this suit, John C. Orr.

Ans. Yes, sir.

Int. 2. Were you, in 1857 & 1858, an officer of the Tennessee & Alabama Central Railroad Company; and if so, what office did you hold?

Ans. I was secretary & treasurer.

Int. 3. Look at the bonds here shown you, and say whether they were bonds issued by the county of Limestone to the Tennessee & Alabama Central Railroad at the time they bear date.

Ans. They are the bonds so issued, numbered 138, 130, 104, 105, 111, 110, & 129.

155 Int. 4. Look at the endorsement on each, "For value received the Tennessee & Alabama Central Railroad Company hereby transfer all right, title, and interest of the within bond, the same being bond secured by a first mortgage on the assets of said company, to John C. Orr, or bearer. Athens, Feb'y 29th, 1858. Ja's W. Sloss, pres't," and state in whose handwriting such endorsement is?

Ans. They are in the handwriting of James W. Sloss, the president.

Int. 5. State whether the said James W. Sloss was the president of the Tennessee & Alabama Central Railroad Company?

Ans. He was.

Int. 6. State whether, on or about the 29th day of July, 1858, a mortgage was executed by the Tennessee & Alabama Central Railroad Company to Jonathan McDonald & others, which was by you countersigned as secretary of said company.

(Defendants, by counsel, object to this question, as it is not competent to prove the matter sought in that way, which objection is certified to the court for its decision.)

Ans. There was a mortgage given, but I can only arrive at the date by the records in Athens, in the probate court. It was countersigned. It so stands on said records. I was secretary, and know a mortgage was given; but I do not remember to have signed it.

156 Int. 7. State whether you do or do not remember that a mortgage was executed by the Tennessee & Alabama Central Railroad Company, to secure the bonds issued by Limestone County to said company.

Ans. I do.

Int. 8. Look at the paper now shown you, marked "A B," and state whether that is or is not a copy of such mortgage.

Ans. I believe it to be a copy of mortgage on record at Athens.

Int. 9. Did you not see and read the original mortgage?

Ans. I cannot remember at this moment, but I certainly did do it, I think *it*, as I would not have signed an instrument without reading it?

Int. 10. Have you or not read the paper now shown you, marked "A B?" If in any respect it varies from the original, state in what respect it so varies.

(Defendants object to this question, on the grounds that it assumes that the witness recollects the contents of the original mortgage, when in his testimony already given he disclaims to have such recollection; which objection is certified, &c.)

Ans. I believe this to be a true copy of the mortgage on record at Athens.

157 (Defendant, by counsel, objects to this answer as not responsive to the interrogatory; which objection is certified, &c.)

Int. 11. Look at the paper now shown you marked "C D," and state whether or not a resolution was passed by the Tennessee & Alabama Central R. R. Company, of which that is a copy, or a substantial copy?

(Defendants, by counsel, object to this interrogatory—

1st. Because it calls for illegal evidence.

2d. Because it calls for evidence which is not the best that the nature of the case admits of.

3rd. It is not competent to prove the witnesses recollection of the reslution of the board without showing the loss or destruction of the minutes —all of which is certified, &c.)

Ans. I believe it is a certified copy of the minutes.

Int. 12. Where are the records and the minutes of the Tennessee & Alabama Central Railroad Company; and, in this connection, state whether they have or not been removed to the State of Tennessee?

Ans. I think some of our records were lost, the balance are at Nashville, Tennessee.

Cross-examination:

Int. 13. In your answer to the 6th int.-in-chief you say, "I was secretary, & know a mortgage was given, but I do not remember to
158 have signed it." You further say, in answer to the 8th int'y, "I believe it, namely, the paper 'A B,' to be a copy of the mortgage on record at Athens." Now state if it is not the fact that you have now no recollection of having countersigned the mortgage referred to in your examination-in-chief?

Ans. I do not remember of putting my name, though I have no doubt that I did it.

(Defendants object to the latter clause of witnesses answer as not responsive to the question, which is certified to the court, &c.)

Int. 14. I repeat the question. Have you any recollection whatever of having countersigned the mortgage?

Ans. I have none.

Int. 15. Is it not true that when, in your examination-in-chief, you spoke of said mortgage being countersigned, that statement was founded entirely upon the fact that the probate court record of Limestone County purports to be of a mortgage which was countersigned?

Ans. Yes, sir; so far as countersigning is concerned.

Int. 16. Is it not true that you have no recollection of having read the original mortgage?

Ans. It is true.

Int. 17. You do not, then, undertake to say, do you, that the paper marked "A B," is a copy of the original mortgage.

159 Ans. I can't say so from any knowledge of having read the original. I have no recollection of reading it.

Int. 18. All then that you meant to say in your examination-in-chief on this subject is that *that* you believe the paper "A B" to be a copy of the record at Athens?

Ans. I mean to be understood about the mortgage that I believe the copy at Athens is a true copy of the original, as set forth by the certificate on the records—my own certificate, and that of the president.

Int. 19. Is this belief here spoken of, founded upon your recollection of the original *of the original* mortgage, or upon the presumption that what purports to be the record of it in the probate court is a correct copy?

Ans. I had much to do with the original mortgage. I furnished a number of parties with funds to pay for the bonds, consequently I had a great deal to do with the mortgage, & was familiar with it at the time. I furnished funds for parties to pay for sixty thousand dollars of the bonds.

(Defendants object to this answer as not responsive to the question, which objection is certified, &c.)

Int. 20. The witnesses attention is again called to the preceeding interrogatory, and a categorical answer is requested.

Ans. It is based upon both.

Int. 21. Do you undertake to state that you have now any re-

160 collection of the contents of the original mortgage?

Ans. I can't state that I ever read it.

Int. 22. Have you any recollection of its contents?

Ans. Not from the remembrance of reading it.

Int. 23. Is it not true that you have now no recollection of the contents of the original mortgage? I do not ask as to your belief as to whether the record in the Limestone probate court is a correct copy, but I ask you if you have any recollection of the contents of the original mortgage.

Ans. I don't think I have.

JNO. T. TANNER.

161 I certify that, on this 16th day of May, A. D. 1871, as written in the caption hereof, I was attended by said John T. Tanner, a witness for complainant; that the deposition hereinbefore appearing was by me reduced to writing, in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal, the day and year above written.

LIONEL W. DAY, *Examiner.* [SEAL.]

(Endorsed:) Filed in clerk's office north. district of Alabama, August 10, 1871. Lionel W. Day, clerk D. C.

162 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMpany & County of Limestone, State of Alabama.

On this 16th day of May, 1871, at Huntsville, in said district, before

me, Lionel W. Day, examiner for said court, comes James H. Sloss, a witness for the complainant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by Rob't C. Brickell, esq., solicitor for the complainants, and in the presence of Robinson & Walker, solicitors for the defendant, whereupon said witness deposes and says:

Int. 1. State whether or not you was the president of the Tennessee & Alabama Central Railroad Co., on the 29th of July, 1858.

Ans. I was.

Int. 2. State whether the Tennessee & Alabama Central Railroad Company, in 1858, executed a mortgage to secure the payment of bonds issued by the county of Limestone to said company?

(Def'd'ts object to this question, because it calls for illegal evidence, and because the fact should be proved by the mortgage itself, which is certified &c. Overruled.)

163 Ans. I cannot say as to the time, but the company did execute a mortgage or deed of trust or conveyance of some kind, to secure those bonds.

Int. 3. State whether that mortgage was or was not signed by you as president of said company?

Ans. I can't say it was. I have an impression that it was. I have no recollection of signing it.

Int. 4. Was or was not such mortgage signed by any officer of said company?

Ans. My recollection is that it was. Dr. McDonald was president about that time, and I don't remember whether it was made under his administration or mine.

Int. 5. Was or not said mortgage executed before the assignment by said R. R. Co. of the bonds of said county?

Ans. My recollection is that it was before said assignment.

Int. 6. Look at the endorsement on the bonds numbered 130, 105, 104, 111, 129, 110, & 138, and say whether such endorsement is in your handwriting?

Ans. It is.

Int. 7. State whether the recital on such endorsement, that the said bonds are secured by a first mortgage on the assets of Tennessee & Alabama Central Railroad Company was and is true or not?

164 Ans. It is my recollection that it was true.

Int. 8. State whether you do or do not recollect that such mortgage was executed, cotemporaneously with the said endorsements?

Ans. It was executed before the endorsements. I don't know the time.

Int. 9. Was it on the same day or a day prior to the endorsement?

Ans. I do not know what time.

Int. 10. State whether you saw such mortgage or not, prior to the making of such endorsements?

Ans. I must have done it, but I can't call it to my mind.

Int. 12. State whether you would or not have made such endorsement without knowing that such mortgage was made?

(Defendants object to this question, because it calls for illegal and irrelevant evidence; which is certified, &c.)

Ans. I would not.

Int. 13. Upon what property or rights of property, was such mortgage created?

(Def'd'ts object to this question, because it calls for illegal evi-

165 dence, and seeks to elicit secondary evidence of the contents of

the mortgage without producing the mortgage itself, or accounting for its non-production; all of which is certified: and because it seeks to elicit evidence which is not the best that the nature of the case admits of; which is certified, &c.)

Ans. I have no recollection of the contents of the mortgage.

Int. 14. What became of such mortgage after its execution?

Ans. I do not know.

Int. 15. State whether such mortgage did or did not convey the road-bed, and right of way of the Tennessee & Alabama Central Railroad Co.?

(Def'd'ts make the same objection as to int'y 13, which is referred to, and certified to the court.)

Ans. I have no recollection of the contents of the mortgage.

Int. 16. State whether such mortgage conveyed the locomotives, cars, and rolling-stock of said co. or not?

(Def'd'ts object to this question on grounds of objection to int'y 13; which is certified to the court.)

Ans. I do not know.

166 Int 17. In your said endorsement of said bonds, it is stated that the payment of said bonds is secured by a first mortgage on the assets of said company. Now state what assets are those referred to.

(Def'd'ts object, &c.)

Ans. I have no recollection of what was conveyed in the mortgage. "I suppose it was the road-bed and property of the company."

(Def'd'ts object to the latter clause of this answer, & the same is certified, &c.)

Int. 19. You do know that a mortgage was executed by said co. to secure the payment of said bonds? Now state if you do or not recollect that said mortgage conveyed any property or right of property for that purpose.

(Def'd'ts object to this question; which is certified to the court, &c.)

Ans. I can't state from my recollection of the mortgage what property was conveyed.

Int. 20. The question is not what property was conveyed, but whether, according to your recollection, such mortgage conveyed any property or rights of property.

(Def'd'ts object, &c.)

Ans. My recollection would be general on that. I can't recollect anything of the contents, but I suppose there is no doubt that some

167 property was conveyed.

Int. 20. State whether your recollection is, or is not, that by such mortgage any property was conveyed.

Ans. I have to make the same answer. I have no recollection of the contents of the mortgage. My impression is, that there was a mortgage on the rolling-stock, but it is but an impression.

(Complainants object to this answer as not responsive; which is certified, &c.)

Int. 21. Then you are to be understood as saying that you recollect that there was a mortgage conveying no property.

(Def'd'ts object, &c.)

Ans. I recollect there was a mortgage. I don't recollect of reading it, or having it read. I don't recollect what it conveyed.

Int. 22. Have you or not said that the statement in your endorsement on said bonds that the payment thereof was secured by a first mortgage on the assets of said co. was and is true, & will you or not now repeat that such recital is true?

Ans. I believe that it was true.

Int. 23. At that time, what assets had said company?

Ans. It had the road-bed, one locomotive, one passenger, mail, & baggage car combined. I think it had about four or five freight-
168 cars. I don't remember any other assets. This is all I can recollect unless you include some subscriptions, the amount of which I do not know.

Int. 24. What was the length of its road-bed, and its terminus?

Ans. My recollection is, that it ran from the junction with the Memphis & Charleston R. R. to Athens, a distance of about fourteen miles. It was to run from said junction to the State-line, a distance of about 27 miles, & was then in process of construction.

Int. 25. This road-bed, the right of way of said company, the locomotive, & cars mentioned, & the subscriptions for stock, constituted the assets of said company at the time of said endorsement.

Ans. That is my recollection.

Int. 26. Will you or not say that such mortgage, according to your recollection, conveyed the said assets to secure the payment of said bonds?

Ans. I can't say, from my recollection of the mortgage, but I suppose so.

Int. 27. You do recollect that there was a mortgage, and is your recollection in that point not distinct?

(Def'd'ts object, &c.)

Ans. Yes.

Int. 28. Referring to the endorsements on said bonds, is or not
169 your recollection refreshed as to what was by such mortgage conveyed?

Ans. From my recollection of the mortgage, I don't know what was conveyed, but, taking the endorsements of the bonds, it shows that it was the first mortgage on the assets of the co. That is as much as I could know about it.

Int. 29. Do you recollect any of the parties to such mortgage, excepting the Tennessee & Alabama Central R. R. Co.?

Ans. I do not.

Int. 30. Do you or not recollect any of the persons who were the holders of bonds of Limestone County at that time?

Ans. Yes, sir.

Int. 31. State whether you recollect whether the holders of the bonds of the county of Limestone were parties to said mortgage.

Ans. I do not, except that it was a mortgage to secure bondholders. I don't remember any names.

Int. 32. Were you or not a holder of a part of the bonds of said county secured by said mortgage?

Ans. I can't answer. I held some bonds at one time for a short time, but whether at that time I can't say.

Int. 33. Do you or not recollect that such mortgage contained any stipulation in reference to suits upon said bonds against the county
170 of Limestone, or is it your recollection that said mortgage was silent upon that point?

Ans. I have no recollection upon that subject.

Int. 34. Do you or not recollect that, as president of the Nashville & Decatur R. R. Co., in 1869, you made a report to the stockholders of said company, in which you stated, in substance, that there was a mortgage on the road-bed, and other assets of the Tennessee & Alabama Central Railroad Company to secure the payment of said bonds of the county of Limestone?

Ans. I cannot state, because I don't remember. I state, in such report, that, in issuing the bonds, the company endorsed them, giving a first mortgage upon the road to secure the payment. I am able to make this statement in reference to my report.

Int. 34. Was that report made upon your then recollection of the said mortgage?

Ans. It was from the general knowledge that there was a mortgage made.

Int. 35. Is not your general knowledge that such mortgage was made, the same now that it was then?

Ans. Yes, sir.

Int. 36. Then, from such general knowledge, cannot you now say that such mortgage did convey said road to secure the payment of said bonds?

Ans. That has always been my impression about it.

171 Int. 37. State whether you have read the paper, marked "A B," and whether that paper does or not conform to your recollection of the mortgage referred to in the endorsements on said bonds.

Ans. I have read said paper, but it does not refresh my recollection as to contents of said mortgage. I don't know whether it conforms to it or not.

Int. 38. Referring to the paper marked "A B," state whether it does or not correspond with the general knowledge which you have said you had of said mortgage, when, in 1869, you made your report aforesaid.

Ans. The general knowledge I spoke of was, that the mortgage had been made to secure the payment of those bonds; as to the terms or conditions I had no recollection.

Int. 39. According to your best recollection and all your recollection of said mortgage, is or not said paper, marked "A B," a substantial copy of said mortgage?

Ans. I can't say that it is.

Int. 40. In what respect does it vary from your recollection of said mortgage?

Ans. I have no recollection of said mortgage, except that it was made to secure the payment of those bonds. The terms & conditions I do not recollect.

Int. 41. Do you not recollect that said mortgage conveyed the road.

172 Ans. My general recollection is that the mortgage was intended to convey the road & property of the road to secure the payment of the bonds; that is my recollection that this was the intention of it.

Int. 41. These bonds of the county of Limestone, numbered 138, 130, 110, 129, 111, 104, 105, are bonds issued by the county of Limestone to the Tennessee & Alabama Central R. R. Co., the payment of which was secured by said mortgage?

Ans. Yes.

Int. 42. These bonds are unpaid except as to a credit on one of them?

Ans. So far as my knowledge goes they are unpaid.

Int. 43. You are now the president of the Nashville & Decatur R. R. Co., with which the Tennessee & Alabama Central Railroad Co. was consolidated.

Ans. Yes, sir.

Cross-examined:

Int. 44. In saying that, in the endorsement on the county bonds, they

are secured by 1st mortgage on the assets of said company, do you mean to speak from recollection of the facts, or because you would not have put the endorsement unless you believe' it to be true.

Ans. I speak from my general recollection of the transaction, that there was a mortgage or deed of trust to secure the bonds.

(S'g'd) J. W. SLOSS.

(Endorsed:) Filed August 11, 1871.

LIONEL W. DAY, *Clerk D. C.*

173 I certify that, on this 16th day of May, A. D. 1871, as written in the caption hereof, I was attended by said Ja's W. Sloss, a witness for complainant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal, the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

174 *Notice to produce records, &c.*

In district court of the United States, northern district of Alabama. In equity.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR Railroad Company.

The defendant the Nashville & Decatur Railroad Company, *are* hereby notified to produce, on the hearing of this cause, the resolution adopted by the board of directors of the Tennessee & Alabama Central Railroad Company, on the 15th February, 1858, in reference to the sale of the bonds of the county of Limestone, issued to said Tennessee & Alabama Central Railroad Company, and which resolution was offerred by Luke Pryor, esq.

The said defendant is further required to produce, on the hearing of this cause, the minutes and records of the proceedings of the meeting of the board of directors of said Tennessee & Alabama Central Railroad Company, held on the 15th February, 1858.

The said defendant is further required to produce, on the hearing of this cause, the deed of mortgage made by the said Tennessee & Alabama Central Railroad Company, on the 29th day of July, 1858, to Jonathan McDonald, James W. Sloss, Booth M. Jones, Henry W. Fennell, James W. Alden, William T. Allen, Thomas Redus, Benjamin M. Grigsby, John C. Orr, and others.

175 The said defendant is also notified to produce the minutes and record of the proceedings of the board of directors of the Tennessee and Alabama Central Railroad Company for the year, 1858. On failure to produce the above-mentioned papers, records, and minutes, complainant will offer other evidence thereof.

November 9, 1871.

WALKER & BRICKELL,
Sol's for Compl't.

("Endorsed:") Received copy & notice, Nov'r 9, 1871. Robinson & Walker, sol's for def't. Filed in clerk's office, November 13th, 1871. Lionel W. Day, clerk D. C.

176 *Notice to take proof.*

In equity. In district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR Railroad Company.

The complainant hereby notifies the defendant, The Nashville & Decatur Railroad Company, that, on Monday, November 13th, 1871, he will proceed, at the office of the judge of probate of the county of Limestone, State of Alabama, in the town of Athens, in said county, to take the depositions of Andrew C. Legg, Thomas Redus, William W. Phillips, Joshua P. Coman, Luke Pryor, William H. Walker, to be used in evidence on the trial of this cause; and, on Monday, the 20th day of November, 1871, at the office of L. W. Day, clerk of the district court aforesaid, in the city of Huntsville, will proceed to take the deposition of John B. McClellan, John C. Orr, and Robert C. Brickell. The said depositions to be read in evidence on the trial of this cause.

WALKER & BRICKELL,
Sol's for Compl't.

(Endorsed:)
Received notice & copy Nov. 3d, 1871.
ROBINSON & WALKER,
Sol's for Def't.

Filed in clerk's office November 13th, 1871.
LIONEL W. DAY,
Clerk D. C.

177 The President of the United States of America, to the marshal of the northern district of Alabama, greeting:

We command you to summon J. B. McClellan to be and appear before the district court of the United States of America for the northern district of Alabama, forthwith, to be held at the court-house in the city of Huntsville, in said district, on the third Monday in November, 1871, then and there to testify, and the truth to speak, in a certain matter of controversy pending in said court, wherein John C. Orr, plaintiff, and Nashville & Decatur Railroad Company & Limestone Co., Alabama, defendants, in behalf the said plaintiff; and this he shall in no wise omit, under the penalty prescribed by law.

Witness the Hon. Richard Busteed, judge of said district court, this the third Monday of Nov'r, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-sixth.

[SEAL.] Attest: LIONEL W. DAY,
Clerk D. C.

Issued 22' day of November, 1871.

(Endorsed:)
Executed by service upon J. B. McClellan, in Madison Co., Ala., Nov. 22, 1871.

Z. E. THOMAS,
Marshal.

Filed Nov. 22, '71.

LIONEL W. DAY, *Clerk.*

178 *Deposition of J. B. McClellan in the case of Orr vs. N. & D. R.*

I was judge of the probate court of Limestone County, Alabama, when the commissioners' court refused to make the levy to pay the county bonds. The bondholders presented to me their bonds for payment. I do not distinctly remember the presentation of Mr. Orr's bonds; but I think all the bonds not lost or destroyed were presented to me.

JOHN B. McCLELLAN.

(Endorsed:) McClellen's depo. Filed Nov'r 24th, 1871. Lionel W. Day, clerk D. C.

179 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE & NASHVILLE & Decatur Railroad Company.

On this 13th day of November, 1871, at Athens, in said district, before me, Lionel W. Day, examiner for said court, comes Andrew C. Legg, a witness for the plaintiff in the above entitled cause; and said witness being by me first duly sworn to testify in said cause, was examined by Rob't C. Brickell, esq., solicitor for the plaintiff, and in the presence of Houston & Pryor, solicitor for the defendant, whereupon said witness deposes and says:

Int. 1. Where did you reside in 1858; in what county & State?

Ans. In Limestone County, State of Alabama.

Int. 2. State whether you were or were not a holder of bonds issued by the county of Limestone payable to the Tennessee and Alabama Central Railroad Company.

Ans. I was, as guardian.

Int. 3. Had you ever the possession or custody of a mortgage executed by the Tennessee & Alabama Central Railroad Co. to secure the payment of such bonds?

180 Ans. I had not, unless it was on the face of the bonds.

Int. 4. Have you now or had you ever the possession of any mortgage or deed executed by the Tennessee & Alabama Central Railroad Company to secure the payment of said bonds.

Ans. I had not.

(S'g'd) A. C. LEGG.

(Endorsed:) Filed November 15th, 1871. Lionel W. Day, clerk D. C.

181 I certify that, on this 13th day of November, A. D. 1871, as written in the caption hereof, I was attended by said Andrew C. Legg, a witness for plaintiff; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal, the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

182 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
LIMESTONE COUNTY & THE NASHVILLE & Decatur Railroad Company.

On this 13th day of November, 1871, at Athens, in said district, before me, Lionel W. Day, examiner for said court, comes Thomas Reedus, a witness for the plaintiff in the above-entitled cause; and said witness being by me first duly sworn to testify in said cause, was examined by Rob't C. Brickell, esq., solicitor' for the plaintiff, and in the presence of Mess. Houston & Pryor, solicitor for the defendant, whereupon said witness deposes and says:

Int. 1. Where did you reside in 1858; in what county & State?

Ans. In Limestone County, Alabama.

Int. 2. State whether you were or not a holder of bonds issued by the County of Limestone, payable to the Tennessee & Alabama Central Railroad Company.

Ans. I was.

Int. 3. Had you ever the possession or custody of a mortgage, executed by the Tennessee & Alabama Central Railroad Company, to secure the payment of such bonds?

Ans. I had not, unless it was on the face of the bonds.

183 Int. 4. Have you now or had you ever the possession of any mortgage or deed executed by the Tennessee & Alabama Central Railroad Company to secure the payment of said bonds?

Ans. I had not.

(Endorsed:) Filed in clerk's office November 15, 1871. Lionel W. Day, clerk D. C.

184 I certify that, on this 13th day of November, A. D. 1871, as written in the caption hereof, I was attended by said Thomas Reedus, a witness for the complainant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal, the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

185 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE & THE NASHVILLE & Decatur Railroad Company.

On this 13th day of November, 1871, at Athens, in said district, before me, Lionel W. Day, examiner for said court, comes Joshua P. Coman, a witness for the complainant in the above-entitled cause; and said witness being by me first duly sworn to testify in said cause, was examined by Rob't C. Brickell, esq., solicitor for the plaintiff, and in the presence of Houston & Pryor, solicitor' for the defendants, whereupon said witness deposes and says:

Int 1. State whether you hold any office in the county of Limestone; and if so, what office?

Ans. I am at present probate judge of the county of Limestone.

Int. 2. You can state whether you have or have not examined the records of the court of probate of said county, and whether there is or not of record in said court more than one deed purporting to be executed by the Tennessee & Alabama Central Railroad Company, to Jonathan McDonald, James W. Sloss, Booth M. Jones, Henry W. Fennell, James W. Allen, William T. Allen, Thomas Reedus, Benja-
186 min M. Grigsby, John C. Orr, W'm W. Phillips, Luke Pryor, Robert C. Brickell, Andrew C. Legg, & John J. Howard.

(Defendant', by counsel, object to this question, because it seeks to elicit illegal evidence and irrelavant evidence, and that it calls for secondary evidence in support of a fact attempted to be proven; all of which is certified to the court for its decision thereon, by the examiner.)

Ans. I have examined said record and find but one deed of the purport mentioned, which deed is recorded from 192 to 201, inclusive, in deed-book No. 10, dated 29th day of July, 1858.

(Defendants, by counsel, object to this answer, because it is illegal and irrelavant, & because it is secondary evidence in support of a fact attempted to be proven, which is certified to the court, &c.)

JOSHUA P. COMAN.

187 I certify that, on this 13th day of November, A. D. 1871, as written in the caption hereof, I was attended by said Joshua P. Coman, a witness for complainant; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

(Endorsed:) Filed November 15, 1871. Lionel W. Day, cl'k D. C.

188 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, & NASHVILLE & Decatur Railroad Company.

On this 13th day of November, 1871, at Athens, in said district, be-

fore me, Lionel W. Day, examiner for said court, comes William W. Phillips, a witness for the plaintiff in the above-entitled cause; and said witness being by me first duly sworn to testify in said cause, was examined by Robert C. Brickell, esq., solicitor for the plaintiff, and in the presence of Houston & Pryor, solicitors for the N. & D. R. R. Co., whereupon said witness deposes and says:

Int. 1. Where did you reside in July, 1858; in what county & State?

Ans. In Limestone County, Alabama.

Int. 2. How long had you resided there prior to that time?

Ans. I am 54 years of age, and have resided in Limestone Co. all but two years of my life.

Int. 3. Were you acquainted with Jonathan McDonald, Ja's W. Allen, W'm T. Allen, who were, in 1858, citizens of Limestone Co., Alabama?

Ans. I was acquainted with all of them.

Int. 4. Are they living or dead?

Ans. All dead.

189 Int. 5. Were you acquainted with Benj. M. Grigsby, formerly of the county of Limestone, State of Alabama?

Ans. I was.

Int. 6. Is he living or dead?

Ans. He is dead.

Int. 7. State whether the said Jonathan McDonald, James W. Allen, W'm T. Allen, & Benjamin M. Grigsby died prior or subsequent to 1st day of January, 1870.

Ans. I think they died before that. They all died before that.

Int. 8. State whether you were or were not, in 1858, a holder of bonds issued by the county of Limestone, payable to the Tennessee and Alabama Central Railroad Co.

Ans. I don't remember. I took some bonds when they were for sale. I never saw them. They were placed in the hands of another man, by whom they were transferred to another party, & the proceeds of such sale went in payment of the bonds. I took them originally to further the interest of the road.

Int. 9. Who sold the bonds for you?

Ans. John T. Tanner.

Int. 10. Had you ever the possession or custody of a mortgage, or any deed, executed by the Tennessee & Alabama Central Railroad Company, to secure the payment of such bonds?

Ans. Never.

190 Int. 11. Have you now the possession or custody of any such mortgage or deed?

Ans. No, sir.

(S'g'd) W. W. PHILLIPS.

191 I certify that, on this 13th day of November, A. D. 1871, as written in the caption hereof, I was attended by said W'm W. Phillips, a witness for plaintiff; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL]
Examiner

(Endorsed:) Filed in the clerk's office, November 15th, 1871. Lionel W. Day, clerk D. C.

192 *Agreement of counsel as to evidence.*

JOHN C. ORR
vs.
NASHVILLLE & DECATUR R. R. CO.

In this case it is admitted that Robert C. Brickell, one of the parties named as mortgagees in Exhibit A B to complainant's original bill, has not now and never had the custody or possession of the original mortgage; that John C. Orr, the complainant, also one of said parties, has not now & never had the custody or possession of said mortgage; that Henry W. Fennell, one of said parties, is dead, & died prior to the institution of this suit; that Booth M. Jones, also one of said parties, is a resident of Arkansas, and was so at and before the institution of this suit; that Luke Pryor, also one of said parties, did not have custody or possession of said mortgage at the institution of this suit, and has not now, and does not know its whereabouts, nor has he any recollection of ever having had custody or possession of said mortgage; that the names and residences of the holders of the bonds of the county of Limestone, mentioned in said original bill, at the institution of this suit, are correctly set forth and stated in the plea and answer of the Nashville & Decatur Railroad Co. in this cause.

WALKER & BRICKELL,
For Compl't.
HOUSTON & PRYOR &
ROBINSON & WALKER,
For Def'd't.

(Endorsed:) Filed Nov'r 21st, 1871. Lionel W. Day, clerk D. C.

193 In the district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMpany & County of Limestone.

On this 21 day of November, 1871, at Huntsville, in said district, before me, Lionel W. Day, examiner for said court, comes Luke Pryor, a witness for the defendant in the above-entitled cause, and said witness being by me first duly sworn to testify in said cause, was examined by Richard W. Walker, esq., solicitor for the defendants, and in the presence of Walker & Brickell, solicitor' for the complainants, whereupon said witness deposes and says:

I, Luke Pryor, state that, about 1867 or 1868 the commissioners' court of Limestone County, State of Alabama, refused to levy a tax to pay off what is known as the then unpaid and outstanding Limestone County bonds, a part of which is in litigation in this suit. The question was mooted among most of the holders of said bonds. Some were inclined to file a bill in the State chancery court to foreclose a deed or conveyance of the Tennessee & Alabama Central Railroad Company to secure the payment of said bonds, & others were in favor of
194 exhausting first their remedies against the county. Houston & Pryor, attorneys at Athens, Alabama, were consulted as to the best course to pursue, by some of the said bondholders. They advised

them to exhaust the remedies first against the county of Limestone, and if they failed to make the money out of the county, then to get the railroad company to pay without further delay or expense. And also thereby to secure the aid of said company to collect said bonds out of said county of Limestone.

About this time and in this condition of things, Mr. John C. Orr, a holder of some of said bonds, consulted Houston & Pryor as to the best course to collect his county bonds. They advised him to ex'aust his remedies against the county of Limestone first.

He, Orr, left the office; said he would see us again.

He, Orr, did return, and informed Houston & Pryor that he had left his bonds with Mr. John T. Tanner, with instructions to do with his, Orr's, bonds, as he, Tanner, did with his own.

That Mr. Tanner soon thereafter delivered to Houston & Pryor, for collection, the said Orr's bonds, together with Tanner and Newell's, & other parties' bonds, to amount, in the aggregate, $37,000.00. It was about the time of the delivery of said bonds to the said Hous-
195 ton & Pryor, for collection, agreed between the said John T. Tanner, on behalf of himself & on the part of those other bondholders he represented—Houston & Pryor, as attorneys aforesaid, & James W. Sloss, the president of the Nashville & Decatur Railroad Company—that the holders of said bonds should ex'aust their remedies against the county of Limestone before seeking any remedy against said railroad company, the said Sloss, as president aforesaid, agreeing to pay a part of the expenses incident & necessary to be incurred in the proceedings against said county, and further agreeing that, if upon the exhausting of the remedies and a failure to recover against the said county, he, Sloss, would pay or provide for the payment by his said railroad company, without further delay or expense to said bondholders.

I further state that, in pursuance of this agreement, the said president as aforesaid has incurred & paid a part of the expenses in consequence of the proceedings had against said county in behalf of said bondholders, since said agreement, and I think within the last twelve or eighteen months. I further state that James W. Sloss was president of the Tennessee and Alabama Central Railroad Company at the
196 time of this agreement, provided the amalgamation had not then taken place; but if after the amalgamation, then he was the president of the Nashville & Decatur Railroad Company, and has so continued to the present time. I further state that since the amalgamation of the Tennessee & Alabama Central Railroad Company under the acts of the legislatures of the States of Tennessee and Alabama, with the other companies in the State of Tennessee, with the Nashville & Decatur Railroad Company, there has not been any officers or organization of the Tennessee & Alabama Central Railroad Company.

I further state that, at the time the Tennessee & Alabama Central Railroad Company executed the deed, conveyance, or other instrument to secure the payment of the Limestone County bonds, James W. Sloss was its president, & has so continued continuously down to its consolidation. I further state that the said James W. Sloss who verified the

answer in this case, and who was examined as a witness in this suit, is the same person who was president aforesaid.

LUKE PRYOR.

197 I certify that, on this 21st day of November, A. D. 1871, as written in the caption hereof, I was attended by said Luke Pryor, a witness for defendants; that the deposition hereinbefore appearing was by me reduced to writing in the presence of said witness, and was then read over to said witness, and was by said witness subscribed and sworn to.

Witness my hand and seal the day and year above written.

LIONEL W. DAY, [SEAL.]
Examiner.

(Endorsed:) "Filed Nov'r 22nd, 1871." "Lionel W. Day, cl'k D. C."

198 *Subpœna duces tecum.*

The President of the United States of America to the marshal of the northern district of Alabama, greeting:

We command you to summon James W. Sloss, president of the Nashville & Decatur Railroad Company, to be and appear before the district court of the United States for said district, on the first day of the next term thereof, to be held at the court-house, in the city of Huntsville, in said district, on the third Monday in November next, and to bring with him, to be used and read in evidence, the minutes of the board of directors of the Tennessee and Alabama Central Railroad Company, of date Feb'y 15, 1858; also resolution offered to board of directors of the Tennessee & Alabama Central Railroad Company by Luke Pryor, esq., on the 15th day of February, 1858, at a meeting held by them on that day in the town of Athens, Alabama, and by them adopted, in reference to the sale of the bonds of the county of Limestone; also the mortgage executed by the Tennessee & Alabama Central Railroad Company, on the 29th day of July, 1858, of record in the court of probate of the county of Limestone, State of Alabama, to secure payment of bonds of said county of Limestone, issued to the Tennessee & Alabama Central Railroad Company; and then and there to testify and the truth to speak in a cer-

199 tain matter of controversy pending in said court, wherein John C. Orr is plaintiff, and the County of Limestone, Alabama, and the Nashville and Decatur Railroad Company are defendants, in behalf of the said plaintiff.

And this he shall in no wise omit, under the penalty prescribed by law.

Witness the Hon. Richard Busteed, judge of said district court, this the third Monday in May, A. D. 1871.

[SEAL.] Attest: LIONEL W. DAY, *Clerk D. C.*

Issued Nov'r 13, 1871.

LIONEL W. DAY, *Clerk D. C.*

(Endorsed:) Returned. The within-named James W. Sloss not found in this district.

Z. E. THOMAS, *U. S. Marshall.*
Per W. E. BUNDRIDGE, *Deputy.*

Filed Nov'r 22d, 1871.

LIONEL W. DAY, *Clk D. C.*

200 *Plea.*

In district court of the United States for the northern district of Alabama.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD Company and Limestone County, in the State of Alabama. } In chancery.

This, an amendment, and as a further plea, filed, by leave of the court first had and obtained, to the plea of the Nashville & Decatur Railroad Company, and as such, as a further plea, without waiving or prejudice in any wise, matters, things, or respect to the plea or pleas heretofore filed by the said Nashville & Decatur Railroad Company to the said bill of complaint of the said John C. Orr; but in all things expressly retaining & adopting said former plea or pleas, as much so and as fully as if herein set forth and repeated, except only in so far as said former plea or pleas are inconsistent herewith.

And the said defendant, the said Nashville & Decatur Railroad Company, here now and hereby, by protestation, not confessing or acknowledging all or any of the matters or things in said complainant's bill of complaint mentioned & contained, to be true, in such sort, manner, & form as the same is therein set forth and alleged, for plea to so much
201 and such parts of said bill of complaint as states, refers to, alleges, and charges that the Tennessee & Alabama Central Railroad Company sold and transferred certain of the bonds, known as the Limestone County bonds, and described as such in said bill of complaint to said complainant and others in said bill mentioned, named, and bond therein described, and to so much and such parts of said bill as alleges and charges that the said complainant is owner and holder of the following county bond' of the county of Limestone, in the State of Alabama, viz, bonds to the amount of ten thousand dollars—two thousand dollars due March 1st, 1863; two thousand dollars due 1st March, 1864; two thousand dollars due 1st of March, 1865; two thousand dollars due 1st March, 1866; two thousand dollars due 1st of March, 1867; and to so much and such parts of said bill as alleges and charges that the said complainant was, at the time of the filing of his said bill of complaint, the owner and holder of seven *of seven* of the said Limestone County bonds, viz: number 104, for the payment of one thousand dollars, on 1st March, 1864; number 105, for the payment of one thousand dollars, on the 1st of March, 1864; number 110, for the payment of one thousand dollars, on the 1st of March, 1865; number 111, for the payment of one thousand dollars, on the 1st of March, 1865; number 129, for the payment of one thousand dollars, on the 1st day of March, 1866; number 130, for the payment of one
202 thousand dollars on the 1st day of March, 1866, number 138, for the payment of one thousand dollars on the 1st day of March, 1867—this last bond was alleged to be credited with *with* a payment of five hundred dollars of date April 1st, 1867—and so much and such part of said bill as alleges & charges, that said complainant on the day of , 1866, presented the said bonds of the county of Limestone, had and owned by him, at the office of the judge of probate of said county for payment, and then demanded payment of the same of the judge of probate and tax-collector of said county; and that said bonds held and

owned by complainant had been presented to the commissioners' court of said county and payment thereof demanded and the same refused, and which said commissioners' court had been prayed to levy and collect a tax for the payment of said bonds, which had been refused; and so much and such part of the reciting and stating parts of, and such portions and parts of the prayer of complainant's bill, as seeks and asks for this court to take jurisdiction of the matters presented in and by said bill, and state an account and render a decree. And this defendant, the Nashville & Decatur Railroad Company, here now pleads thereto, and for plea says that, heretofore, and long before the
203 filing of his said bill of complaint against the county of Limestone and this defendant in this cause, to wit, on the 21st day of April, 1868, *that* Jno. D. Rather, for himself together with most of the other persons, of whom the complainant was one, holding and owning bonds of the same kind and character as those held by complainant, of the said county of Limestone, in State of Alabama, instituted and brought their joint action and suit against the said county of Limestone, to recover of said county the principal and interest due on said bonds, respectively held and owned by them, the same being commended by petition in the circuit court of Limestone County, State of Alabama, addressed to the Hon. W'm B. Wood, judge of said circuit court, said petition of the said Jno. D. Rather, Jno. C. Orr, the said complainant, and others, as aforesaid, having been filed in said circuit court, on the 21st day of April, 1868, praying said circuit judge for his honor's writ of mandamus, directed to and requiring the court of county-commissioners of the said county of Limestone, in the State of Alabama, for'with, without excuse or delay, to levy and caused to be collected such a tax as would be sufficient to pay the outstanding and unpaid bonds aforesaid of the said county of Limestone; said petition showing the said complainant, John C. Orr, to be one of the said petitioners, and praying a payment of the very bonds mentioned and described
204 in his said bill in this court and cause, and praying for the said writ of mandamus; and this defendant avers that, at a regular term of the circuit court, begun and held for the said county of Limestone, on the 1st day of May, 1868, said petition came on to be heard and the said William B. Wood rendered his judgment, adjudging that each of said petitioners recover of said county of Limestone, the amount of the bonds respectively owned and held by them, specifically naming the petitioners and the bonds respectively held and owned by them. And this defendant avers that said court, at said term, did render a judgment upon said petition in favor of the said complainant, the said John C. Orr, for the amount of the principal and interest of the very bonds as alleged and charged in his said bill, to which this is a plea, to be held and owned by him, as in said bill of complaint charged. And said Hon. William B. Wood, circuit judge, having full and complete authority and jurisdiction in the matters and things presented in said petition, and other pleadings touching the same, rendered said judgment and granted said peremptory writ of mandamus prayed for, and ordered the same to issue, commanding said commissioners' court of the said county of Limestone, laying aside all excuse, to for'with levy and cause to be collected a tax sufficient to fully pay off the
205 principal and interest of the said outstanding and unpaid Limestone County bonds, aforesaid, including the very bonds held by complainant and mentioned in his said bill of complaint. Defendant further avers that the clerk of said circuit court of the said county of Limestone, on the 2d day of June, 1866, in obedience to and in pursu-

ance of the said judgment of the said Wood, awarding said peremptory writ of mandamus, which said writ was duly executed on the said court of county-commissioners of the county of Limestone, on the 15 day of August, 1866. Defendant further avers that said commissioners' court of the said county of Limestone, in obedience to the said peremptory writ of mandamus, did, on the day of August, 1871, duly assess and levy a tax and appoint a collector to collect the tax so levied and assessed, an amount sufficient to pay off and discharge the principal and interest due and owing on the said outstanding and unpaid Limestone County bonds, heretofore mentioned, including those alleged to be held and owned by him, the said complainant, in his said bill, filed in this court. Defendant further avers that the collector so appointed and qualified is now engaged in the collection of the tax under the levy and assessment aforesaid, by the said commissioners' court
206 of the said county of Limestone, to and with which taxes, he, the said collector, will pay off and take up the said outstanding and unpaid Limestone County bonds, as aforesaid, according to their tenor and effect, including those held and owned by the said complainant. Therefore, this defendant doth plead, that the suit or proceedings commenced by the petition of Jno. D. Rather & others, of whom the said John C. Orr, the said complainant, was one of the petitioners therein, and which said proceedings was a voluntary election by said petitioners, of whom the said John C. Orr was one, of the said State courts of Alabama, having complete and full jurisdiction to heard and determine all matters touching the parties and subject-matters in said suit and proceedings.

This defendant further pleads and avers that the said suit and proceedings aforesaid in the said State courts was, at the time of the filing of complainant's said bill of complaint in this court, pending in the said State courts of Alabama; and this defendant pleads the pendency of the said suit and proceedings hereinbefore mentioned to the right of the said complainant to come into this court, or *entitled* to invoke the aid and jurisdiction of this court to recover the payment of the said
207 bonds, alleged in his said bill to be held and owned by him, complainant, or in the power of this court to take jurisdiction of the case presented in complainant's said bill; for defendant avers that the said State courts of Alabama, before and at the time of the filing and bringing of complainant's said bill of complaint to which this is a plea, *that the State courts* having possession of the subject-matter, and the jurisdiction of the said State courts having attached to and over the same, deprives this court of all and any jurisdiction of complainant's suit; and this defendant prays the judgment of this court, whether this defendant should be compelled to make any further answer to complainant's said bill, and prays to be dismissed thence with costs, &c.

We, the undersigned counsel for the defendant, the Nashville & Decatur Railroad Company, do hereby certify that, in our opinion the plea above pleaded by said defendant, is well founded in point of law.

This day personally appeared before me, James Trimble, a United States circuit court commissioner for the middle district of Tennessee, James W. Sloss, who, having been sworn, says he is the presi-
208 dent of said Nashville & Decatur Railroad Company, the defendant in the above-stated suit, and as such has control and management of its affairs, and has knowledge of its affairs; and further

states that the plea by the said defendant above pleaded is true in point of fact, and that it is not interposed for delay.

(S'g'd) NASHVILLE & DECATUR RAILROAD COMPANY.
[SEAL] By J. W. SLOSS, *President.*
G. W. SEAY, *Secretary.*

Subscribed & sworn to before me, this 20th day of November, 1871.
[SEAL] JAMES TRIMBLE,
U. S. Circuit Commissioner for the Middle District of Tennessee.

(Endorsed:) Filed November 22d, 1871. Lionel W. Day, clerk D. C.

209 *Amendment to answer of def't.*

In the district court of the United States for the northern district of Alabama.

Amendment filed, by leave of the court, to the answer of the Nashville & Decatur Railroad Company to the bill of complaint heretofore filed in said court by John C. Orr, complainant, against the Nashville & Decatur Railroad Company and the County of Limestone, defendants.

By way of amendment to said answer, this defendant says that, before the institution of this suit, it was understood and agreed between most of the said bondholders, said complain't being a party to said agreement, and the Nashville & Decatur Company, that the said bondholders, complainant being one of them, would make the said county of Limestone, the maker of said bonds, pay for them, and that too the end they would institute legal proceedings to compel the payment of said bonds by said county, and would exhaust their remedies against said county before attempting to make said company responsible for said bonds, this respondent agreeing and promising, in consideration of this said agreement and undertaking of said bondholders, of whom complainant was one, to pay a portion of the expense incurred in the effort to make said county pay said bonds. In pursuance of said agreement,
210 said bondholders, complainant being one of them, instituted legal proceedings to compel the payment of said bonds by said county, which said proceedings were pending when this suit was instituted, and are yet pending and undetermined, which said proceedings are more particularly described in section 14 of defendant's original answer in this cause, to which reference is here prayed. In pursuance of said agreement, this defendant has incurred heavy expense in the prosecution of said proceedings instituted to make said county pay said bonds. The said injunction mentioned in said section 14 of this answer has, since the filing of the original answer in this cause, been dissolved, and the said court of county commissioners has, since the last term of this court, levied a tax for the purpose of paying off said bonds and has appointed a special collector in pursuance of said act of the legislature, passed 14th December, 1855, to collect said tax, and said collector is now engaged in the collection of said tax.

This defendant sets up and relies on the facts herein above stated in bar of said bill. This defendant refers to and adopts the statements made and set forth in the said original answer of defendant heretofore filed in this cause, except so far as the same are inconsistent with the statements made in this amendment.

211 And now, having further fully answered said bill, respondent prays to be hence dismissed, with his costs, &c.

This answer is here now signed by the said defendant, the Nashville & Decatur Railroad Company, by James W. Sloss, the president thereof, and countersigned by George W. Seay, the secretary of said company, and, by the authority and direction of said James W. Sloss, president and chief executive officer of said company, the common seal of the Nashville & Decatur Railroad Company is hereunto affixed.

[SEAL.] NASHVILLE & DECATUR RAILROAD COMPANY,
By J. W. SLOSS, *President.*

G. W. SEAY, *Secretary.*

Before me, James Trimble, a United States circuit court commissioner for the middle district of Tennessee, this day personally appeared James W. Sloss, who being duly sworn, says that he is the president of the Nashville and Decatur Railroad Company, one of the defendants in the above-stated suit, and as such has the chief control and management of its affairs, & has knowledge of its acts & transactions; that the statements made in the foregoing answer, as upon the knowledge of said Nashville & Decatur Railroad Company are true, and those made upon information and belief, he believes to be true.

212 Subscribed & sworn to before me, this the 20th day of November, 1871.

[SEAL.] JAMES TRIMBLE,
U. S. Circuit Commissioner.

(Endorsed:) Filed November 23d, 1871. Lionel W. Day, clerk D. C.

213 *Agreement of counsel.*

In district court of the United States, northern district of Alabama.

JOHN C. ORR
vs.
NASHVILLE & DECATUR R. R. CO. AND COUNTY of Limestone.

In this cause it is agreed that defendant The Nashville & Decatur R. R. Co. may file an additional plea without prejudice to the demurrer of said defendant, on file, or to the plea of said defendant heretofore filed, and that defendant may also file an amended answer without prejudice to said demurrer or pleas. It is further agreed that this cause be submitted at the same time on the said demurrer, pleas, bill, answer, and evidence; that said submission shall not prejudice, or be a waiver of either the demurrer or pleas, but that on the hearing upon said submission, said defendant shall have the benefit of said demurrer and pleas in like manner and as fully as if the same were separately set down for hearing, this agreement being made to save time and in order to facilitate the hearing of the whole case at the present term.

WALKER & BRICKELL,
For Compl't.
HOUSTON & PRYOR,
ROBINSON & WALKER,
For Def'd't.

(Endorsed:) Filed November 22d, 1871. Lionel W. Day, cl'k D. C.

214 *Transcript from comm'rs' court, Limestone Co., Ala., offered in evidence by defendant.*

Commissioners' court, Feb'y 13th, 1871, Limestone County, Ala.

Upon motion of W. W. Phillips, it is further ordered that a sufficient tax be levied and collected to pay off the entire principal and interest of the outstanding bonds, known as the railroad bonds.

Commissioners' court, Limestone County, Ala., Feb'y 14th, 1871.

Upon motion of W. W. Phillips, it is ordered that E. S. Strange be, and he is hereby, appointed railroad tax collector.

Commissioners' court, Limestone County, Ala., April 13th, 1871.

And upon motion of said W. W. Phillips, it is ordered that the order made on the 13th day of Feb'y, 1871, "that a sufficient tax be levied and collected to pay off the entire principal and interest of the outstanding bonds, known as the railroad-bonds," be continued to the next term of this court.

Commissioners' court of Limestone County, Alabama, adjourned term, Aug. 25th, 1871.

On the railroad-bond question being taken up James M. Lane and A. C. Legg withdrawing, in obedience to a writ of prohibition heretofore granted & served upon them, on motion of W. W. Phillips, the following resolutions were adopted and ordered to be spread upon the minutes as follows, to wit:

"*Be it resolved by the court of county commissioners for Limestone County, Alabama*, That we find the sum of $65,500 as principal and $36,366.66 as interest, which together make the sum of $101,866.66 yet due from and by the County of Limestone, in said State,
215 upon the unpaid and outstanding bonds of the said county of Limestone, issued by said county, under an act of the said State, to 'authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital stock of the Tennessee and Alabama Central Railroad Company,' passed 14th December, 1865."

Resolved further by said court, That, under and in obedience to a peremptory mandamus of the circuit court of said State, held in and for said county, said writ, date June 2d, 1868, we will at once proceed to obey and comply with its mandate.

Resolved further by said court, That it will require a tax of 850 percentum on the State tax of the present year to meet and pay off the said amount of the said unpaid & outstanding bonds, set forth in the first resolve of this court as above shown.

It is resolved further and ordered by said court, That the said court do now hereby assess a tax of 850 per centum on the State tax of the present year, to pay off and discharge said bonds, in obedience to said writ of mandamus, ordered by the court; that the bond of Edward S. Strange, who was, heretofore, on the 14th day of February, 1871, appointed railroad tax collector be, and the same is hereby, taken and approved, and ordered to record as follows, to wit:

STATE OF ALABAMA, *Limestone County:*

Know all men by these presents that we, Edward S. Strange and John T. Tanner, Tho's Redus, Wm H. Walker, T. T. Binford,
216 J. B. Haney, Rob't L. Bridgeforth, J. P. Sims, W. B. Newell, W'm M. Byrd, (trustee,) Edward W. Grigsby, and James M. Lane, are held and firmly bound unto the court of county commissioners of Limestone County, Alabama, and their successors in office, in the penal sum of two hundred thousand dollars; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 28th day of August, 1871.

The condition of the above obligation is such, that whereas the above-bounden Edward S. Strange was, on the 14th day of February, 1871, duly appointed by the court of county commissioners of Limestone County, Alabama, railroad tax collector for said county: Now, if the said Edward S. Strange shall faithfully discharge the duties of such office during the time he continues therein, or discharge any of the duties thereof, then this obligation to be void; otherwise to remain in full force and effect.

Signed and sealed the day and year above-written.

[U. S. stamp, $1.00.]

E. S. STRANGE. [SEAL.]
JNO. T. TANNER. [SEAL.]
THO'S REEDUS. [SEAL.]
W'M H. WALKER. [SEAL.]
T. T. BUIFORD. [SEAL.]
J. B. HANEY. [SEAL.]
ROB'T L. BRIDGEFORTH. [SEAL.]
J. P. SIMS. [SEAL.]
W. B. NEWELL. [SEAL.]
W'M M. BYRD, *Trustee*, [SEAL.]
217 Per B. L. ALLEN, *Att'y.* [SEAL.]
EDWARD W. GRIGSBY, [SEAL.]
By E. N. GRIGSBY, *Attorney-in-Fact.* [SEAL.]
JA'S M. LANE. [SEAL.]

Taken and approved this 28th day of August, 1871.

JOSHUA P. COMAN,
W. W. PHILLIPS,
S. B. ISOM,
Com'ers' Court.

THE STATE OF ALABAMA, *Limestone County:*

I, Joshua P. Coman, judge of the probate court for said county and State, & ex-officio clerk of the same, do hereby certify that the foregoing is a full, complete, and perfect transcript of the different orders of the court of county commissioners of said county & State as therein shown. And I further certify I am ex-officio judge of said court of county commissioners and clerk of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of probate, at office in the town of Athens, on this the 18th of November, 1871.

[SEAL.] JOSHUA P. COMAN, *Judge P. C.*

[Stamp.]

Filed in U. S. clerk's office district court, this the 23d day of November 1871.

LIONEL W. DAY, *Clerk D. C.*

218 *Transcript of decree of chancery c't, Limestone Co., Ala., offered in evidence by defendant.*

December term, 1870.

C. W. RAISLER
vs.
E. S. STRANGE, RAILROAD TAX COLLECTOR of Limestone County. } No. 81.

Come the parties, by their solicitors, and the following decree was filed by the chancellor in this cause:

"This cause having been submitted by agreement of the parties, which is of file in the papers of the cause, upon the bill, exhibits, and answer for final decree, upon the merits, at the May term, 1870, and held open for consideration during vacation, and after a careful examination of the able and thorough arguments, in writing, from the solicitors on both sides, I have been unable, according to the decisions of the courts, to come to the conclusion that the act of the general assembly of the State of Alabama, passed December 14, 1855, entitled 'An act to authorize the court of county commissioners of Limestone County to subscribe to the capital stock of the Tennessee & Alabama Central Railroad Company,' (pamph't acts, 1855 & 1856, page 291,) is unconstitutional and void. Entertaining this opinion, I have no discretion but to pronounce the bill without merits, and the injunction cannot be sustained. (Gilpick vs. The City of Dubuke, 1 Wall., 175; Van Hoffman vs. The City of Quincy, 4th Wall., 535, and cases there referred to; also cases referred to on solicitor's brief, which will be filed.

219 It is ordered, adjudged, and decreed, that the injunction heretofore issued in the cause be dissolved, and that the bill of complaint be dismissed. It is further ordered that the defendant in this case pay the costs, to be taxed by register.

W'M SKINNER.

It may not be improper to remark that the question heretofore argued upon a motion to dissolve the injunction, seems to have been settled by the supreme court of Alabama adversely to the opinion then held by the chancery court on the question the' argued.

W. S.

See Brown vs. Cester, Sum. term, 1870.

THE STATE OF ALABAMA, *Limestone County:*

I, Benton Sanders, register of the 4th district of the northern chancery division of the State of Alabama, hereby certify that the foregoing is a correct transcript of the decree of the chancellor, filed in my office and entered of record of the 19th of December, 1870, it being a regular term of said court, in the case of C. W. Raisler vs. E. S. Strange, railroad tax-collector of Limestone County.

Given under my hand & seal of office, at Athens, Alabama, on this the 20th day of November, in the year 1871.

[SEAL.] B. SANDERS, *Register.*

[Stamp.]

(Endorsed:) Exhibit . Filed this 23d of November, 1871. Lionel W. Day, clerk D. C.

220 *Transcript from circuit c't of Limestone Co., Ala., offered in evidence by compl't.*

THE STATE OF ALABAMA :

Pleas had at a circuit court began and held for the county of Limestone, at the court-house, in the town of Athens, on the fourth Monday after the fourth Monday in March, in the year of our Lord one thousand eight hundred and sixty-eight, the Hon. William B. Wood, judge of the 4th judicial circuit, presiding.

JOHN D. RATHER ET AL.
vs.
THE COMMISSIONERS' COURT OF LIMESTONE County. } Petition.

Be it remembered that, heretofore, to wit, at a circuit court began and held for the county of Limestone, at the court-house, in the town of Athens, on the 4th Monday after the 4th Monday in March, A. D. 1868, was returned unto said court, a petition, in words & figures as follows, viz:

Petition.

To the judge of the circuit court for Limestone County, State of Alabama, sitting at Athens, in said county :

Your petitioner, John D. Rather, a resident citizen of the State of Alabama, and over the age of twenty-one years, & who makes this application for himself, & in the behalf of others, whose names appear in exhibit P. D., to a written agreement of facts between the court of county commissioners of said county & your petitioner, in behalf of himself and the others as aforesaid; which said written agreement, in all of its parts and with its exhibits, as in it stated & referred to, is here-
221 with filed, marked Exhibit O, and prayed to be taken as a part of this petition.

Your petitioner refers to the act of the general assembly of the State of Alabama, approved December 19th, 1863, and alleges that by said act the Tennessee & Alabama Central Railroad Company was duly chartered and incorporated, & declared a body politic and corporate, with powers, privileges, responsibilities, duties, and exemptions, as in said act set forth. Said act is here referred to, marked Exhibit B, and made a part of this petition.

Petitioner alleges that said act was & has been fully and in all of its requirements complied with by said company and all others upon whom duties were devolved by said law ; and that said railroad company, fully and duly organized, as required and provided for in said act, and became an acting corporation and company as contemplated by said act.

Petitioner states that the line of railroad, the construction of which the Tennessee & Alabama Central Railroad was to form a part, had Columbia, in the State of Tennessee, for its northern, and Montevallo for its southern termination, which will more fully appear by reference to Exhibit B, and which is asked to be a part of this petition, thereby
222 passing the said Tennessee and Alabama Central Railroad nearly centrally through said county of Limestone from north to south.

Petitioner states that the legal vote's of said county of Limestone, on two occasions & upon full discussion & deliberation, voted by very large majority in favor of the proposition that the court of county commis-

sioners of said county should subscribe to the capital stock of said railroad company the sum of two hundred thousand dollars to aid in the construction of said road. The first voting, as above stated, was on the 1st Monday in May, 1854, and the second was on the 1st Monday in August, 1855.

Petitioner alleges further that, under and by virtue of the said act of the general assembly of Alabama herein above referred to as Exhibit B, and also under and by virtue of another act of said general assembly passed 14th December, 1855, which is here referred to, marked Exhibit C, and prayed to be taken as a part of this petition, said court of county commissioners, in strict conformity to the terms and requirements of the said acts, marked Exhibits B & C, as above shown, did subscribe to the capital stock of said railroad company the said sum of two hundred thousand dollars, as fully authorized to do as aforesaid.

223 Petitioner further states that, under and by virtue of the provisions of the said act passed 14th December, 1855, which is marked Exhibit C, as aforesaid, the court of county commissioners and, after every and all of the conditions and requirements of said act to that end had been fully met and complied with, not only by said court of county commissioners and said railroad company, but by all persons and parties upon whom any duty by and under said act was devolved, did make and execute and issue county bonds of and upon the said county of Limestone for the sum of two hundred thousand dollars. Said bonds were made, signed, executed, and in all other respects issued in strict conformity to and compliance with said law of 14th December, 1855; and, as required by said law, they were delivered to the president and directors of the Tennessee and Alabama Central Railroad Company for the purposes and set forth in, and contemplated by, said law, the payment of the subscription by said county of the two hundred thousand dollars aforesaid.

Petitioner further states that, by virtue of the provisions of an act of the general assembly of the State of Alabama, approved 8th February, 1858, as well as their legal right so to do without the aid of said

224 act, the said Tennessee and Alabama Central Railroad Company did sell and dispose of all or many of said bonds in conformity to the provisions of said act, which said act is marked Exhibit E, and prayed to be taken as a part of this petition, and which said bonds, thus sold, was delivered to the respective purchasers thereof, and the money raised on said bonds by collection, sale, or otherwise. has been and was duly and faithfully applied as by said law required and contemplated.

Petitioner further states that much of the two hundred thousand dollars, or many of the bonds issued as aforesaid, have been paid by virtue of, & in compliance with, the provisions of the laws above referred to and marked exhibits as aforesaid, by the proper assessment of said court of county commissioners—say the bonds which became due 1st March, 1858, 1859, 1860, 1861, 1862, and the most of 1863 & 1867, and some few falling due in other years.

Petitioner is informed and believes, & so states, that all of said bonds issued by Limestone County as aforesaid have been paid, except those named, number'd, & specified in Exhibit P D, to the said written agreement of facts, all of which is made Exhibit O to this petition as aforesaid.

Petitioner states that the probate judge of the said county of

225 Limestone has, at each and every meeting of the stockholders of said railroad company, attended as the representative of the county, holding and voting at said stockholders' meetings all of the un-

paid bonds of said county as had not been paid and absorbed by the assessments and payments, & certified under said law, the last of which meetings thus attended by said probate judge was held at Nashville, in the State of Tennessee, on the day of November, 1867, long after ten years from the first assessments had expired.

Petitioner states that, for all the taxes paid under said assessment & law, the tax-collector executed to each tax-payer a receipt, as provided for in said law; and that for all such receipts the said railroad company have issued, and is bound to issue, a corresponding amount in stock of said company.

Petitioner further states that said outstanding and unpaid county-bonds have been presented to the said court of county commissioners, and also to the tax-collector of said county, for payment, and payment was refused. They have also been presented to said court of county commissioners for an assessment under said law, and said
226 court refused to make such assessment to pay either the bonds or the interest upon them.

Petitioner also states that, during the most of the time from the early part of 1862 to the fall of 1865, no court of county commissioners was had or held for county of Limestone; that the said county was most of said time within the military lines and occupation of the Federal troops, which to a large extent suspended the civil law and prevented, or tended to prevent, *of* action of said court, & no assessments, levy, or collection of taxes, was made during that time. For a portion of the time there was no probate judge, county commissioner, assessors, or collectors of taxes; and even after said officers were appointed, for a time they declined or refused to qualify & act, so that said bondholders had no means or opportunity of enforcing their demands under said law, and the first & only assessment made since the termination of the war to meet & pay off said bonds, or any of them, was in 1866, and that was for twenty thousand dollars.

Petitioner states that the records, showing the registry under said law of said bonds as have been paid, except those paid by the assessment of 1866, have been burnt or destroyed; but for that fact,
227 petitioners would exhibit a precise and accurate statement of bonds paid off and destroyed by virtue of said law.

Petitioner states that he understands the reason of said court for refusing to make the proper assessment to be, that the 5th section of the law of 14th December, 1855, authorizes and requires said court to make an annual assessment for ten years from the date of the first assessment, for the payment of said bonds, and as the ten years have elapsed, their authority and duty under the law had ceased, and although many of the bonds are outstanding and due, yet the time having expired said court refuses to make further assessments under said law.

Petitioner denies the law of the position assumed by said court and holds that as the bonds are due from the county to the persons named in Exhibit ("P D"), as aforesaid, & and so admitted by said court, & are a just debt against the county, & especially as the county received the full value of the bonds, that it is the duty of the court to assess for the just debts of the county, & that the said court should assess and pay off all of said bonds and the interest thereon.

Petitioner states that the omission or defalcation in the pay-
228 ment of said county bonds was the fault of said court and its surroundings, and not of the bondholders; and that said bondholders should not be defrauded in the collection of their just debts by

the default, omission, or inability, of said court to act or perform its duty.

Petitioner states that said bonds were purchased by said bondholders for a full & valuable consideration; that they have paid for and now own the same; that they were purchased in good faith & upon the pledge of said court that it would provide for & pay off said bonds as they might severally & respectively become due.

Petitioner charges that the county of Limestone justly owes said bonds, & that it is the duty of said court of county commissioners to assess, levy, & have collected a tax for their payment & the interest thereon, & that said bondholders have no other specific or adequate legal remedy against said court of county commissioners for the collection of their said bonds & interest, except by writ of mandamus. He therefore prays your honor to grant to & for & in behalf of petitioner & the other bondholders as aforesaid, your honor's writ of mandamus, directed to the court of county commissioners of Limestone County,
229 now composed of the Hon. Jno. B. McClellen, Henry W. Kimball, James M. Lane, William A. Hine, & Luke G. Bullington, commanding said court to assess a tax under said act of 14th December, 1855, sufficient to pay off & discharge said bonds now due & unpaid, as shown in Exhibit ("P D",) with the interest thereon.

Petitioner charges that the county has no property or means out of which said bonds & interest, in whole or in part, could be collected, and the court of county commissioners have no means of paying the debts of said county except by the assessment & collection of taxes.

HOUSTON & PRYOR, *Att'y, &c.*
W'M H. WALKER, " "
JNO. N. MALONE, " "

THE STATE OF ALABAMA, *Limestone County:*

Before Joseph A. Moore, clerk of the circuit court in & for the county of Limestone, personally appeared John T. Tanner, one of the bondholders referred to in the foregoing petition & named in Exhibit (P.D.,) & made oath that the facts as stated in said petition are true, to the best of his knowledge & belief.

JNO. T. TANNER.

Subscribed & sworn to this 21st April, 1868.

J. A. MOORE, *Clerk.*

The court of county commissioners named in the above & fore-
230 going petition demur in short by consent, alleging that the facts stated in said petition & exhibits do not entitle the petitioners to the writ prayed for.

COMAN & JONES,
Att'ys for C't Commissioners.

EXHIBIT O.

THE STATE OF ALABAMA, *Limestone County:*

In the application of John D. Rather for himself & others hereinafter named for a mandamus against the court of county commissioners of said county of Limestone, the parties to said proceeding for mandamus, the said John D. Rather, by attorney, & the said court of county commissioners, agree to the following statement of facts to be submitted to the

Hon. W'm B. Wood, one of the judges of the circuit court for the State of Alabama, or to any successor, if he should have one, for his decision upon said application for mandamus, at the next term of circuit court to be holden in & for said county of Limestone. Said mandamus is to require said court of county commissioners to assess & levy a tax in said county as provided for & specified in an act of the general assembly of said State, passed on the 10th of Dec., 1855, see sess. acts
231 1855-'6, page 291, for the purpose of paying the unpaid & outstanding bonds of said county, dated, executed, issued, & made payable as required & provided for in & by the provisions of said act above mentioned & referred to, which said bonds will be more particularly described and referred to hereinafter.

1st. That the acts above referred to is the law under which the bonds now in controversy were issued by said court of county commissioners, & also the law by and under which said bonds are to be paid off & discharged.

2nd. That all of the terms, conditions, stipulations, and requirements of said law, except as hereinafter stated, were duly & properly done, discharged, & performed by those whose duty it was to perform & discharge them.

3rd. That said bonds, called county bonds, to the amount of two hundred thousand dollars, were issued by said court of county commissioners, under & by virtue of, & in strict compliance with & conformity to the provisions of said law, & said bonds were by said court, as by said law required, delivered to the president & directors of the Tennessee & Alabama Central Railroad Company.

4th. That the said Tenn. & Ala. Central Railroad Company, under & by virtue of an act of the general assembly of Alabama, approved Feb'y 8th, 1858, see sess. acts 1857-'8, page 331, sold, negotiated, transferred, & delivered for a valuable consideration, said bonds to various persons.

232 5th. That the following of said bonds have been sold & transferred to the said John D. Rather, & the same are justly due & unpaid, viz, two bonds due 1st March, 1864, for $500 each, one due 1st March, 1864, for $1,000, two bonds, due 1st March, 1865, for $500 each, & one due 1st March, 1864, for $1,000.

6th. That the said bonds of the said John D. Rather & those others who are interested with him in this proceeding have been duly presented to said court of county commissioners & also to the tax-collector of said county for payment, & by both the court & tax collector payment was refused. Said bonds were also presented to said court, & said court applied to & asked to assess & levy the tax provided for by said law for the payment of said bonds, which application the said court refused to grant, & refused to assess said tax, upon the grounds & for the reason, that sec. 5 of the acts first above-named, provided for the assessment of said tax annually for ten years, & as the ten years have elapsed, & some of the bonds are yet unpaid & outstanding as aforesaid, the court feels that its authority to assess said tax ceased with the expiration of the ten years & that said court now has no authority to make said assessment.

233 7th. That the first assessment under said law was for the bonds falling due 1st March, 1858; assessment was made in 1857.

8th. That for & during some of the years of the late war between the Northern & Southern States, to wit, the years 1863, 1864, & 1865, no assessment of said annual tax was made by said court, upon the alleged ground, & for the reason that the county of Limestone aforesaid was

within the Federal military lines & under the Federal military rule, and during those years said court could not & did not make said required assessment. In some of those years above-named, there was no probate judge for the county of Limestone, & in some there was no court of county commissioners for said county of Limestone; & in some of said years, both the probate judge & the court of county commissioners were prevented from discharging their respective functions, including the assessment aforesaid, because of the conditions of the country, growing out of the Federal military rule aforesaid, so that said assessment was not made for said years because of a public war, & also for the other reasons above given.

9th. That all of said bonds were issued on & dated 14th Feb'y, 1857, $20,000 of them made payable on the 1st March, 1858, & the same amount payable 1st March of each year thereafter, up to & including the year 1867.

234 10th. That the paper filed herewith, marked (C. L.,) & which constitutes a part of this statement, contains a correct descriptive-list of those of said bonds that have been paid under said law by assessment of said court of county commissioners, as far as shown by the records of said court. The records of said court, showing the others that have been paid, have been destroyed.

11th. That the paper herewith presented, marked (P. D.,) and which is a part of this statement, contains a true list of those of said bonds with the name of the owner of each bond that is yet due & outstanding, & that are embraced in this application & proceeding.

12th. That this agreement & those facts pertain & apply to, not only the case of John D. Rather, as entitled above, but also to the following named persons, owners of bonds, & the following-described bonds owned by them, respectively, & it is expressly agreed by & between the attorneys of said John D. Rather & others as aforesaid, & the court of county commissioners aforesaid, that the decision of said W'm B. Wood or his successor as aforesaid, in the case of said John D. Rather, whether for the one side or the other, shall fully apply to, control, & govern the cases of those intended to be embraced by this proceeding, &

235 whose names are hereinafter given; & if an assessment shall be made or ordered by said decision in the case of said John D. Rather, it shall also be made to comprehend & provide for the cases & bonds of the others as aforesaid.

13th. The parties hereto being willing & desirous that the legal question involved in this controversy, as herein above stated, between said bondholders & the said court of county commissioners should be decided without unnecessary delay & expense, the facts herein are agreed to. The laws referred to are made a part of this statement, & that the proceedings may be instituted & had at the next or any subsequent term of the circuit court for Limestone County, the court hereby waiving the necessity of the rule to show cause; that the cause may proceed as though the rule had been duly issued & served on said court.

14th. That either party feeling a'grieved by any decision the said Wood or his successor may make in the matter, has & shall have the right to take this case to the supreme court by appeal or any other mode sanctioned by law.

15th. That when the Tennessee & Alabama Central Railroad negotiated said bonds, a trust deed or mortgage was given by said road upon its road-bed & fixtures, *or* to secure the payment of said

236 bonds in the event they could not be recovered from the county of Limestone.

(This 15 paragraph to be rejected by the court in making its decision if the judge should decide the fact contained in it not to be pertinent or relevant to the issue herein presented.)

Commissioners.

L. G. BULLINGTON,
JA'S M. LANE,
HOUSTON & PRYOR,
Att'ys for Petitioners.

JOHN B. MCCLELLAN, *Probate Judge.*

EXHIBIT (B.)

No. 424. An act to incorporate The Tennessee & Alabama Central Railroad Company.

SEC. 1. *Be it enacted by the senate & house of representatives of the State of Alabama in general assembly convened*, That James W. Sloss, Thomas A. Nelson, Roswell Haine, John R. Mason, James T. Sorrell, John R. Harris, W. W. Phillips, Robert B. Peebles, M. C. Smith, W'm D. Hays, A. Sidney Harris, J. N. S. Janes, Thomas Redus, Jonathan McDonald, John T. Tanner, B. M. Townsend, W'm Maillor, John D. Rather, A. A. Burleson, R. N. Walden, Henry Fennell, R. C. Mason, James Hendricks, & George D. Shortridge, their associates & successors, with such other persons as shall associate with them for that purpose, are hereby appointed, constituted, & declared a body
237 politic & corporate by the name of Tennessee & Alabama Central Railroad Company, & by that name shall be capable in law of purchasing, holding, or leasing, selling, & conveying real, personal, and mixed property so far as shall be necessary for the purpose of this incorporation, & by said incorporated name may sue & be sued, plead & be impleaded, answer & be answered unto in any court of law or equity of this State or elsewhere, & to have & use a common seal, & the same to break, alter, or amend at pleasure; to pass such rules & ordinances for the good government of said corporation as to them may seem proper; & generally to do all things necessary to carry into effect fully & completely the object of this act.

SEC. 2. *Be it further enacted*, That any five of said corporators may act & do all things necessary to be done preparatory to a meeting of the stockholders in the Tennessee & Alabama Central Railroad Company, & they shall open books of subscription for the capital stock of said company at such time & place, & with such notice, not less than (30) thirty days, as they may think proper.

SEC. 3. *Be it further enacted*, That as soon as one hundred thousand dollars shall have been raised, either by subscription, loan, or
238 otherwise to or by said company, said railroad company shall have authority hereby to put under contract for construction any or all portions of said road that they may think proper.

SEC. 4TH. *Be it further enacted*, That the capital stock of said railroad company may be one and a half millions of dollars, in shares of twenty-five dollars each, with the privilege of increasing said stock to three millions of dollars, should said increase be found necessary for its construction & further management.

SEC. 5TH. *Be it further enacted*, That the said railroad shall extend from the town of Montevallo, in Shelby County, in a northeasterly di-

rection through Decatur, in Morgan County, and across the Tennessee River at that point; thence through Athens, in Limestone County, and from thence to some point on the boundary line between the States of Alabama & Tennessee; thence to connect with a railroad leading through Pulaski to Columbia, Tennessee, and that said company shall have the privilege of crossing the Tennessee River, either by junction, under contract with the Memphis & Charleston Railroad Company, for which authority is hereby given, or by the construction of a separate bridge for that purpose, or by any other means that may be necessary to effect a crossing of said river.

SEC. 6TH. *Be it further enacted*, That as soon as one hundred thousand dollars shall have been raised, the corporators hereby appointed shall call a meeting of the stockholders at such time & place as they may appoint. At such meeting said stockholders, or a majority of them in value, shall elect nine directors by ballot, to manage the affairs of said company, & the corporators aforesaid, or any three or more of them, shall be judges of said first election. The directors then chosen shall elect among themselves a president of said company, and allow him such compensation as they may think proper; and on all occasions whenever a vote of stockholders shall be necessary to be taken, each stockholder shall be allowed one vote for every share owned by him or her, and any stockholder may depute any other person to vote or act for him or her, as his or her proxy.

SEC. 7TH. *Be it further enacted*, That the president & directors of said company shall be chosen annually by the stockholders of said company, & if any vacancy shall occur, by death, resignation, or otherwise, of any president, or director, or directors, before the year for which they have been elected shall have expired, such vacancy shall be filled by the president & directors, or a majority of them, & that the president & directors shall hold their offices until their successors are chosen & qualified; shall have power to call meetings of stockholders at any time, & a majority of them shall have power to remove the president or any director, & fill all vacancies occasioned by removal at pleasure.

SEC. 8TH. *Be it further enacted*, That the said president & directors, or a majority of them, may appoint all such officers, engineers, agents, or servants whatsoever, as they may deem necessary to carry on the business of said company, & dismiss them at pleasure; & a majority of them shall determine the compensation of all officers, engineers, and servants of said company; shall have power to adopt all rules or regulations deemed necessary & proper for exercising all the powers vested in this company for carrying into effect the object of this act; and said president & directors, or a majority of them, are empowered to borrow money to carry into effect the object of this act; to issue certificates or other evidences of such loan, & to pledge the property of said company for the payment of the same with interest.

SEC. 9TH. *Be it further enacted*, That the said president & directors shall have power to require the stockholders of said company to pay such installments on their respective shares of stock in said company, and at such time as they may think best for the interest of said company: "Provided, however, that thirty days' notice be given, and no call shall be made for more than eight per cent. upon each share; and upon the failure or refusal of any stockholder to pay the installments on his or their stock, in pursuance of any call made by said president & directors as aforesaid, said president and directors may, upon giving thirty days' notice, proceed to sell, at public sale, the

share or shares of said stock owned by such stockholder, or such part as they may think proper, to the highest bidder; and if, upon the sale of said shares of stock owned by said defaulting stockholder, said share should be sold for less than the amount due upon the installment above mentioned, said stockholder shall be liable to pay the said company the deficiency in manner & form hereinafter specified.

SEC. 10TH. *Be it further enacted*, That, upon the failure or refusal of any stockholders to pay any installment called for or demanded by the president & directors of said company, or if, upon the sale
242 of said shares as before specified, they shall be sold for less than the amount due on installment as above mentioned, the president and directors, upon giving thirty days' notice to said defaulting stockholder, may proceed to, by their attorney, *to* move the circuit court of the county in which said stockholder resides, for judgement against said stockholder for the amount called for by the president & directors of said company, or as the case may be, for any difference that may occur in the sale of said stock as above specified; and said court is hereby authorized, and empowered, and required to render judgement against said defaulting stockholder at the term of the court at which said motion is made, which judgement so given shall be a lien on the real & personal property of said stockholder, & execution may issue as upon other judgments & costs; and all notices hereby required to be given to any defaulting stockholder, shall be issued by & in the name of the secretary of the board of directors, & served by the sheriff of the county in which the stockholder may reside, & shall be returned to the office of the clerk of the court as in case of common writs with the same penalties; and the sheriff shall be entitled
243 to one dollar for serving said notice, which, with all the costs that may accrue on said proceedings, shall be paid by the party against whom judgment may be rendered.

SEC. 11TH. *Be it further enacted*, That the president & directors of said company are hereby authorized to contract for & receive conveyances of land for the track of said road, not to exceed one hundred & fifty feet wide; also for depots, stations, side-tracks, turn-outs, single & double or treble tracks, &c., and of stone, timber, wood, gravel, & earth, which may be necessary or required in the construction of said road; and when the owner & company cannot agree upon the price, or when the owner is an infant, non-resident, or non compos mentis, then it shall be lawful for the president and directors of said company to apply to the sheriff of said county in which said land or other property may be situated, who shall summons a jury of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages & return their award or judgement to the next term of the circuit court for the county in which said lands or other property may be situated,
244 which shall be entered by the clerk as the judgment of the court, and execution may issue thereupon for the amount of said judgment and costs: *Provided always*, That if either party shall, upon the return thereof, be dissatisfied, they may upon filing bond with good & sufficient security in such sum as the court may order, be allowed an appeal to the next term of the circuit court where said cause shall stand for trial de novo: *Provided also*, That thirty days' notice shall be given to the opposite party, served by the sheriff of the county.

SEC. 12TH. *Be it further enacted*, That the jurors trying said case shall take the following oath which the sheriff is authorized to administer: You and each of you do swear (or affirm as the case may be) that you will well & truly try the case now pending, and submitted to your

decision, between A. B., complainant, & the president and directors of the Tennessee & Alabama Central Railroad Company, defendants, and that you will render such compensation to the complainant, as to you shall seem just & proper in the premises.

SEC. 13TH. *Be it further enacted*, That the said lands or other property, when so condemned or estimated as aforesaid, shall to & become the property of said company forever, upon the payment by the
245 said company of the amount assessed by said jury to the party claiming damages, on account of the construction of said road through said lands or for such other property: *Provided*, That the work on said road shall in no wise be delayed on the account of the proceedings had as aforesaid.

SEC. 14TH. *Be it further enacted*, That in case any person or persons, shall wilfully injure or obstruct in any degree the said road, or injure any of the property connected with its construction or use, he or they shall forfeit and pay to the president and directors of said company three times the amount of all damages they may sustain in consequence thereof, to be sued for and recovered in the same manner as provided by law for individuals in like cases; and on complaint to any magistrate within whose jurisdiction such offense shall be committed, it shall be the duty of such magistrate to bind the said person or persons so offending with sufficient security, for his or their good behaviour for a period of not less than one year, and such offender shall also be subject to indictment, & shall be sentenced at the discretion of the court to be imprisoned not less than three nor more than six months.

246 SEC. 15TH. *Be it further enacted*, That, in the construction of said railroad, the president & directors of said company shall not, in any way or manner obstruct any public road now established; but shall provide convenient passages to travel over said road.

SEC. 16TH. *Be it further enacted*, That the president and directors of said company may cause any road or way to be changed or altered, in such manner that said road may be made on the best site of ground for that purpose: *Provided*, That said company shall put such road or way in as good condition as at the time of altering or changing the same.

SEC. 17TH. *Be it further enacted*, That the president and directors of said company for the purpose of making said railroad or repairing or changing it afterwards shall have the same right of entry of adjacent lands, and to cut, quarry, dig, take, & carry away any stone, wood, gravel, or other material which may be necessary, as is before provided as to the right of way: *Provided, however*, in all cases said company shall make compensation to the owners, as is agreed on in the manner herein set forth & provided for.

SEC. 18TH. *Be it further enacted*, That, whenever, in the con-
247 struction of said railroad it may be necessary to cross any established railroad or way, authority is hereby given to cross the same; but it shall be the duty of said company so to construct their railroad, as not to impede the passage of such established road or way. And if it be erected for said railroad over any navigable water-course, the same shall be made so as not to obstruct the navigation of such water-course.

SEC. 19TH. *Be it further enacted*, That payment of the subscription to the stock in said company may be made in materials, labor, provisions, and all & everything necessary for the construction of said road; which the board of directors, at their discretion, may deem expedient to accept.

SEC. 20TH. *Be it further enacted*, That, after the completion of said road or any part thereof, the said president and directors may levy and collect toll from all persons, property, merchandise, and other commodity transported thereon: *Provided*, the nett profits of said company shall never exceed twenty-five per cent. per annum.

SEC. 21ST. *Be it further enacted*, That said company shall have the right, under the same rules, regulations, and restrictions, & with
248 the like privileges and immunities as herein granted to the main road, to extend, for the purpose of uniting with other roads, as well as to build and construct branch railroads, not more than five miles in length on either side of said main road, and shall have authority to form junctions with other roads, and to erect and maintain toll-houses and other buildings for the accommodation of their business, as they may deem suitable for their interests.

SEC. 22ND. *Be it further enacted*, That the said railroad company shall have the power to unite & consolidate into one road all or such parts of the said road with any railroad that may connect with the said Tennessee & Alabama Central Railroad at the Tennessee line at the point at which the said Tennessee & Alabama Railroad may touch said Tennessee line: *Provided, however*, said union or consolidation shall not be made or affected until a majority of the stockholders in value in said Tennessee & Alabama Central Railroad shall consent to the same.

SEC. 23RD. *Be it further enacted*, That, in the event the said railroad company fail to obtain capital or means, by subscription or other-
249 wise, to the extent mentioned in this charter, under section three, within the period of twelve months, then and in that event it shall be lawful, & authority is hereby given and declared by the passage of this act, for the stockholders of said railroad company to exercise all the rights and privileges under this charter, so as to construct & complete that portion of said line of railroad extending from the town of Dacatur, in the county of Morgan, on the Tennessee River, through the town of Athens, in Limestone County, to the boundary line between the States of Tennessee and Alabama, so as to meet and connect with a railroad now contemplated in the State of Tennessee, to run through the town of Pulaski, in Giles County, to the town of Columbia, when the sum of one hundred & fifty thousand dollars shall have been raised by subscription or otherwise in the counties of Morgan and Limestone shall be first applied to the construction & completion of that part of the line of said railroad extending from the town of Decatur, on the Tennessee River, through the town of Athens, in Limestone County, to the State line, at the point to intersect the contemplated railroad in the State of Tennessee; and provided further, that should said railroad company determine, under this provision, to construct and complete only
250 that portion line of railroad extending from Decatur through Athens to the Tennessee line, then and in that event, said railroad company may, under this charter, and in the manner mentioned in sec. six, by a meeting of the stockholders, reduce the number of directors from nine to five. And authority is hereby given to increase or lessen the number of directors, from time to time, as the stockholders may deem necessary & proper for the good management of said portion of said line of railroad.

SEC. 24TH. *Be it further enacted*, That the said company hereby incorporated shall commence building said railroad, & shall let out *to* contract for grading & cross-ties for at least twenty miles thereof, within two years from the passage of this act.

SEC. 25TH. *Be it further enacted*, That nothing in this act contained

shall be so construed as to prevent other railroad companies, now or hereafter to be incorporated, from crossing said Tennessee & Alabama Central Railroad, & other railroads now or hereafter to be incor-
251 porated, shall have the right to connect or intersect with the Tennessee & Alabama Central Railroad Company, upon the terms & conditions usual in the comity of railroad companies, & said company shall have no right to discriminate against roads so crossing or connecting,

Approved December 19th, 1853.

EXHIBIT (C.)

An act to authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital-stock of the Tennessee & Alabama Central Railroad Company.

SEC. 1ST. *Be it enacted by the senate & house of representatives of the State of Alabama in general assembly convened*, That, in pursuance of the wishes of the people of Limestone County, as expressed at an election held for that purpose, on the first Monday in May, 1854, & also re-affirmed at the recent election for representatives in the general assembly, held on the first Monday in August, 1855, that the court of county commissioners for said county of Limestone be, & they are hereby, authorized, empowered, & required for & in behalf of said county to subscribe for stock in the Tennessee & Alabama Central Railroad
252 Company to the amount of two hundred thousand dollars to be raised in the manner and upon the conditions hereinafter mentioned.

SEC. 2ND. *Be it further enacted*, That the manner of making said subscription shall be as follows: Whenever the said company or corporation, through their proper officers, shall apply as provided in section 2 of the act incorporating the same, approved December 19th, 1853, for the subscription in this act mentioned, the judge of probate of said county, sitting as president of said court of county commissioners, shall write the name of the said county on the subscription list for the sum of two hundred thousand dollars, & shall thereto subscribe his name & affix his seal of office; & thereupon the rights of said company and the obligations on said shall fully attach upon the conditions aforesaid.

SEC. 3RD. *Be it further enacted*, That, as soon as the conditions set forth in the succeeding section of this act are fully complied with, it shall be the duty of the court of county commissioners of Limestone County to take the steps hereinafter prescribed, & all the necessary & proper steps for the purpose of raising, annually, the sum of twenty
253 thousand dollars, until the sum of two hundred thousand dollars shall be raised, to be applied to the construction of that portion of the Tennessee & Alabama Central Railroad, which shall be in Limestone County, to wit, from some point at or near Decatur, to the northern line of said county, where it shall intersected by a railroad to be constructed; thence in the direction of Pulaski & Columbia, Tennessee, styled The Central Southern Railroad, & on no account shall the funds raised by virtue of this act, or any *any* part of them be otherwise appropriated.

SEC. 3*rd*. *Be it further enacted*, That no assessment or levy of taxes shall be made by virtue of this act until (1st,) an amount of good & solvent subscription shall be made to the capital-stock of said company,

which, including the two hundred thousand dollars raised by virtue of this act, shall be sufficient, according to the estimate of a competent engineer, based upon an accurate & thorough survey of said route, to construct a railroad track across the county of Limestone, as hereinbefore specified; nor until (2nd) the grading of the Central Southern Railroad, of the State of Tennessee, is let to contract, or the court of
254 county commissioners of Limestone County are satisfied, from other reasons, that *that* the said Central Southern Railroad will be constructed, nor until (III,) the president of said Tennessee & Alabama Central Railroad Company shall have made affidavit before the probate judge of Limestone County, that the bonds or money to be received by him under the provisions of this act, shall be solely & faithfully applied to the construction of said road within the limits of Limestone County, & the private property of the president who first makes the affidavit shall be liable to the county of Limestone for the misapplication of said bonds or money made during his term of office, and his successors in office shall each, for his own misapplication, be similar' liable.

SEC. 5TH. *Be it further enacted*, That, as soon as the three proceeding conditions are complied with, and annually thereafter for a period of ten years, it shall be the duty of the said court of county commissioners to assess such a per centum tax on the State tax of that year, & each succeeding year for the period above-mentioned, as shall raise the sum of twenty thousand dollars, annually; & the same shall be collected in the same manner as the State and county taxes are collected.

255 SEC. 6TH. *Be it further enacted*, That the tax-collector, for his services under this act, shall be allowed a reasonable compensation, to be determined by the court of county commissioners; & before he begins to collect said railroad-tax he shall execute to the said court his penal bond in the sum of forty thousand dollars, with good & sufficient securities, to be approved by said court, for the faithful performance of his duties in collecting & paying over as hereinafter directed. the said amount so assessed.

SEC. 7TH. *Be it further enacted*, That, in case of the death or neglect of duty of the tax-collector, or his mal-appropriation of the funds above mentioned, the same provisions, penalties, & summary proceedings as specified in sections 492, 493, 494, 2628, & 2632 of the code of Alabama, & all other provisions now in force against collectors of the State & county taxes, shall fully apply to the collector under this act.

SEC. 8TH. *Be it further enacted*, That, as soon as the conditions set forth in section 4 of this act are complied with, it shall be the duty of the court of county commissioners of said county to issue & deliver to the president & directors of the Tennessee & Alabama Central Railroad Company county-bonds for the sum of two hundred thousand dol-
256 lars, payable in ten equal annual installments, on the 1st day of March of each year thereafter, at the office of the probate judge of said county, or elsewhere, as the said court may deem best. And the said court shall have authority to make said bonds for any amount they may think proper, not exceeding one thousand dollars nor less than five hundred dollars: *Provided, however*, That the aggregate amount of bonds payable in any year shall not (except on the contingencies mentioned in the succeeding section of this act) exceed nor fall under the sum of twenty-thousand dollars. The said bonds shall be signed by at least a majority of the court of the county commissioners, & in the presence of the probate judge, who shall certify that fact, under his seal of office, upon the bond, & the said bonds shall bear no interest, unless,

by default of the county, they shall not be paid when presented at maturity.

SEC. 9TH. *Be it further enacted*, That the court of county commissioners aforesaid shall endeavor to make such an assessment each year as shall raise the exact sum of twenty thousand dollars. But in case the amount assessed and collected shall either be more or less than that sum, the amount to be assessed the next year shall be increased
257 or diminished as the deficit or excess of the preceeding year.

SEC. 10TH. *Be it further enacted*, That it shall be the duty of the tax-collector, with the funds raised under the provisions of this act, to pay off & take up the bonds issued under the provisions of this act as they are presented at maturity.

SEC. 11TH. *Be it further enacted*, That the tax-collector shall make an annual settlement with said court at such times as it may direct, & in such settlements all bonds issued under the provisions of this act, and paid off & taken up by him shall be his vouchers for the payment of the same; and upon such settlement he shall deliver said bonds to said court, which shall register them in a book to be kept for that purpose, and then shall burn them.

SEC. 12TH. *Be it further enacted*, That all laws now in force as to the duties of the collectors of State & county taxes, as to giving notice of the place & time of collecting taxes, return of insolvencids, & persons removed, & the examination thereof, & the correction and approval and allowance of the same, & all the powers, duties, and penalties now in force in regard to the collectors of State & county taxes, shall apply with equal force to the collector under the provisions of this act.

SEC. 13TH. *Be it further enacted*, That the tax-collector must execute to each individual, corporation, or company paying a tax under the provisions of this act, a receipt which must state the amount so paid and for what purpose. The said receipt shall be assignable as cotton receipts now are, & when any person, corporation, or company, either in their own right or by virtue of an assignment as above, shall file with the treasurer of the Tennessee & Alabama Central Railroad Company, said receipt, to the amount of twenty-five dollars or upwards, it shall be the duty of the said treasurer to issue to each person, corporation, or company a certificate for the aggregate amount of the receipt so filed, in which said company shall acknowledge payment to the amount in said certificate specified; the said certificate shall itself be assignable in the same manner as other railroad stock generally is, and shall constitute the owner thereof a shareholder in the said company, & shall entitle him to all the rights, benefits, and advantages enjoyed by any other subscriber to the stock of said company.

SEC. 14TH. *Be it further enacted*, That in all the meetings of the stockholders of said company, held after the issue of the bonds before-
259 mentioned, the probate judge of Limestone County, in person or by proxy, represent all that portion of the county subscription of two hundred thousand dollars for which certificates of stock have not been granted by the treasurer, as prescribed in the proceeding section of this act, and he shall be allowed one vote for each twenty-five dollars of such portion; but this section shall not be construed as entitling him to receive the dividends which may be, time to time, declared upon such portion; but the same shall be paid to the holders of the tax-collector's receipts, to whom no certificates of stock have been issued, in the same manner as they are paid to those who have received said certificates.

SEC. 15TH. *Be it further enacted*, That the provisions of this act shall

as fully apply in the event that portion of the Tennessee and Alabama Central Railroad which lies in Limestone County only shall be constructed, as provided for in section 23rd of the act incorporating the same, as if the entire line of said road *were* under contract, the conditions of section 4th of this act having been complied with.

SEC. 16TH. *Be it further enacted*, That, in the event an amalgamation shall be made of the companies of the Southern Central Railroad and the Tennessee and Alabama Central Railroad, or that portion
260 of it referred to in the proceeding section of this act, as provided for in section 22nd of the act incorporating the latter, then, & in that event, the provisions of this act shall be in as full force and effect as if such amalgamation had not been made.

SEC. 17TH. *Be it further enacted*, That whatever amount shall be reported by a competent engineer, to be employed by the Tennessee & Alabama Central Railroad Company, after a careful, thorough & accurate survey of said line through Limestone County, as sufficient to build the same, shall be deemed and held, when exhibited by said company to said court, as a sufficient amount under the provisions of this act.

SEC. 18TH. *Be it further enacted*, That the court of county commissioners aforesaid shall decide upon the solvency of the subscription, & for all the purposes of this act, the county subscription of two hundred thousand dollars shall be deemed & held by them as solvent; but in determinating the sufficiency of the amount subscribed, as prescribed in the proceeding section of this act, it shall be their duty to make the proper allowance for whatever appreciation or depreciation the aforesaid county bonds may sustain in their negotiation.

SEC. 19TH. *Be it further enacted*, That any member of said
261 court of county commissioners refusing to carry out the provisions of this act, or failing to attend the meetings of said court purposedly to defeat the execution of this act, shall be subject to all the penalties, fines, & forfeitures now in force for failure to perform his duties as a member of said court; and, in addition thereto, he shall be liable to pay to said company all such damages as it may have sustained on account of such wrongful refusal or absence.

SEC. 20TH. *Be it further enacted*, That the court of county commissioners aforesaid shall have power and authority to do all & other acts and things not inconsistent with the provisions of this act which may be necessary & proper to give full effect to the objects & provisions of this act.

December 14th, 1855, this act became a law.

EXHIBIT (E.)

An act to authorize the sale of the bonds of the county of Limestone.

SEC. 1ST. *Be it enacted by the senate & house of representatives of the State of Alabama in general assembly convened*, That the bonds of the county of Limestone, issued by the court of county commissioners of said county, in aid of the Tennessee & Alabama Central Rail-
262 road Company, under an act of the legislature of the State of Alabama, passed December 14th, 1855, entitled An act to authorize the court of county commissioners of Limestone County, State of Alabama, to subscribe to the capital stock of the Tennessee & Alabama Central Railroad Company, be, and the same are hereby, made transferable, either by endorsement or delivery.

SEC. 2D. *Be it further enacted*, That the said company be, and it is

hereby, authorized to sell & dispose of said bonds, at their market-value, or upon such terms & at such discount as to said company may seem proper.

SEC. 3RD. *Be it further enacted*, That the said company be, and it is hereby, authorized to bind itself for the redemption of said bonds, either by endorsement on the same, or in any other way that it may deem advisable, or to mortgage any or all of its property, including its track and franchises, for the redemption of the same; and any such contract or contracts shall enure to the benefit of the transferee or transferees, holder or holders, of any bond or bonds embraced in such contract or mortgage.

SEC. 4TH. *Be it further enacted*, That all laws and parts of laws contravening the provisions of this act be, & the same are hereby, repealed.

Approved February 8th, 1858.

263 EXHIBIT (C. L.)

List of bonds taken up by Gaines C. Smith, T. C., of Limestone County, Alabama.

1. B. M. Grigsby,	bond No.	146,	due	March	1st,	1867	$1,000 00
2. Thomas Redus,	" "	145,	"	"	"	"	1,000
3. Jonathan McDonald,	" "	140,	"	"	"	"	1,000
4. Robert C. Brickell,	" "	149,	"	"	"	"	1,000
5. W'm S. Allen,	" "	143,	"	"	"	"	1,000
6. Rob't C. Brickell,	" "	98,	"	"	"	1864	1,000
7. Rob't C. Brickell,	" "	117,	"	"	"	1865	1,000
8. Rob't C. Brickell,	" "	128,	"	"	"	1866	1,000
9. Henry W. Fennell,	" "	142,	"	"	"	1867	1,000
10. Booth M Jones,	" "	141,	"	"	"	"	1,000
11. W. W. Phillips,	" "	150,	"	"	"	"	1,000
12. Andrew C. Legg, guardian,	" "	147,	"	"	"	"	1,000
13. James W. Allen,	" "	144,	"	"	"	"	1,000
14. John C. Orr,	" "	136,	"	"	"	"	1,000
15. Thomas Redus,	" "	92,	"	"	"	"	500
16. Thomas Redus,	" "	92,	"	"	"	"	500
17. Henry W. Fennell,	" "	96,	"	"	"	"	500
18. Jonathan McDonald,	" "	97,	"	"	"	"	500
19. Jonathan McDonald,	" "	98,	"	"	"	"	500
20. Jonathan McDonald,	" "	99,	"	"	"	"	500
21. Jonathan McDonald,	" "	100,	"	"	"	"	500
22. John C. Orr, ½ of	" "	138,	"	"	"	"	500
23. W'm H. Walker,	" "	destroyed		"	"	"	1,000
24. Jonathan Orr,	" "	"		"	"	"	1,000
							$20,000 00

I, John B. McClellan, judge of probate of said county, hereby certify that the foregoing is a true list of the railroad-bonds returned paid by Gaines C. Smith, T. C., 1866, 1867.

Given under my hand, this April 6th, 1868.

JOHN B. McCLELLAN,
Judge P. C.

264 EXHIBIT (P. D.)

List of outstanding unpaid bonds of the county of Limestone, known as the railroad-bonds, with the amount, when, and to whom, due.

To Edward W. Grigsby, one bond, due March 1st, 1863, for $500.00; one bond, due March 1st, 1865, for $500.00; and one bond, due March 1st, 1866, for $1,000.00.

To Thomas Reedus, three bonds, due March 1st, 1864, (2 of said bonds for $500.00 each, & one for $1,000.00;) & three other bonds, due March 1st, 1865, (one for one thousand dollars. & two for $500.00 each;) and three other bonds, due March 1st, 1866, (one for $1,000.00, & two for $500.00 each.)

To Robert L. Bridgeforth, two bonds, due March 1st, 1864, for $500.00 each; & one other bond due March, 1866, for $1,000.00.

To J. B. Haney, three bonds for $1,000.00 each, due, one March 1, 1864, one March 1, 1865, & one March 1, 1866.

To J. B. Sims, four bonds, one thousand dollars each, due respectively on the 1st day of March, 1864, 1865, 1866, & 1867.

To John P. Grigsby, one bond for one thousand dollars, due March 1st, 1863.

To James Henderson, two bonds, $500.00 each, one due 1st March, 1863, & one 1st March, 1867; & one for $1,000.00, due 1st March, 1864.

To J. C. Orr, for six bonds, each due, respectively, two March 1st, 1864, two March 1, 1865, & two March 1, 1866, for $1,000.00
265 each; & one for $500.00, due March 1st, 1867.

To Tanner & Newell, five bonds for $1,000.00 each, due respectively on 1st days of March, 1863, 1864; 2 on 1st March, 1865; & one on 1st March, 1866; & three bonds for $500.00 each, due respectively on 1st days of March, 1865, 1866, & 1867.

To W. B. Newell, four bonds of $1,000.00 each, due respectively on 1st days of March, 1863, 1864, 1865, & 1866.

To Thomas S. Malone, for six bonds, $500.00 each, due, one on 1st March, 1863, two on 1st March, 1864, two on 1st March, 1865, & one on 1st March, 1866.

To Jonathan Fisher, one bond for $1,000.00, due 1st March, 1866.

To John D. Rather, two bonds, $1,000.00 each, one due 1st March, 1864, & one due 1st M'ch, 1865; & four bonds of $500.00 each, two due 1st March, 1864, & two 1st March, 1865.

To William Byrd, trustee for heirs of W'm T. Allen, three bonds, $1,000.00 each, due respectively on the 1st days of March, 1864, 1865, & 1866.

To James W. Lane, for three bonds, $1,000.00 each, due respectively on 1st day' of March, 1864, 1865, & 1866; six bonds, $500.00 each, due, respectively, two 1st March, 1864, two 1st March, 1865, & two 1st March, 1866.

To Fannie Binford, for three bonds, $1,000.00 each, due on the 1st days of March, 1864, 1865, & 1866 respectively.

266 To Jonathan Orr, three bonds of $1,000.00 each, due on 1st days of March, 1864, 1865, & 1866.

To William H. Walker, four bonds, $1,000.00 each, due on 1st days of March, 1863, 1864, 1865, & 1866.

Judgment.

JOHN D. RATHER ET ALS.
vs.
THE COMMISSIONERS' COURT OF LIMESTONE County. } Pet. for mandamus.

And now, to wit, on this 1st day of May, 1868, came the parties, by attorneys, & this cause having come on for hearing, at this term of the court, at Athens, Limestone County, State of Alabama, on the issue joined, and was fully argued by counsel; whereupon the court, after due

& mature consideration thereon had, do order and adjudge that judgment be entered upon the demurrer for the plaintiffs, overruling the same; and the defendants declining to plead or answer further, it is ordered & adjudged that the defendants. & their successors in office be, & they are hereby, commanded forthwith to make full & ample provisions for the payment of all the outstanding unpaid bonds now due, & the interest thereon, that may be due thereon when paid, which bonds were issued by the county of Limestone, in the State of Alabama, under & by virtue of the provisions of an act of the general assembly of the State of Alabama, passed 14th December, 1855, in
267 payment of its subscription, under said act, of two hundred thousand dollars to the capital stock of the Tennessee & Alabama Central Railroad Company, according to the tenor & effect of said bonds & the provisions of said act by the assessment & collection of such taxes as may be necessary for that purpose, as follows:

To Edward W. Grigsby, for one bond, due first of March, 1863, for five hundred dollars, one bond, due first of March, 1865, for five hundred dollars, & one bond with the interest that may be due thereon.

To Thomas Redus, for three bonds, due the first of March, 1864, (two of said bonds for five hundred dollars each, & one for one thousand dollars;) & three other bonds, due the 1st March, 1865, (one for one thousand dollars, & two for five hundred dollars each;) & three other bonds, due the 1st of March, 1866, one for one thousand dollars, & two for five hundred dollars each,) with the interest that may accrue thereon.

To Robert L. Bridgeforth, two bonds, due 1st March, 1864, for five hundred dollars each; & one other bond, due 1st March, 1866, for one thousand dollars, with the interest that has and may accrue thereon.

To J. B. Haney, for three bonds, for one thousand dollars each, one due 1st March, 1864; one due 1st March, 1865, & the other, 1st March, 1866, with the interest which has & may accrue thereon.

268 To J. B. Sims, for four bonds, for one thousand dollars each, due respectively on the 1st days of March, 1864, 1865, 1866, & 1867, with the interest that has & may accrue thereon.

To John B. Grigsby, for one bond, for one thousand dollars, due 1st March, 1863, with the interest that may be due or accrue thereon.

To James Henderson, for two bonds, for five hundred dollars each, one due on the 1st March, 1863, & the other 1st March, 1867, & one for one thousand dollars, due 1st March, 1864.

To J. C. Orr, for six bonds, each due, respectively, two on the 1st day of March, 1864; two on the 1st March, 1865, & two on 1st day of March, 1866; & one for five hundred dollars, due on 1st day of March, 1867, with interest thereon.

To Tanner & Newell, for five bonds, for one thousand dollars each, due respectively on the 1st days of March, 1863, 1864; two on 1st March, 1865, & one on 1st March, 1866: & three bonds for five hundred dollars each, due respectively on the first days of March, 1865, 1866, & 1867, with interest thereon.

To W. B. Newell, for four bonds, of one thousand dollars each, due respectively on the first days of March, 1863, 1864, 1865, & 1866.

To Thomas S. Malone, for six bonds, of five hundred dollars
269 each, due, on 1st March, 1863; two on 1st March, 1864; two on 1st March, 1865, & one on 1st March, 1866, with interest thereon.

To Jonathan Fisher, for one bond, for one thousand dollars, due 1st March, 1866, with interest thereon.

To John D. Rather, for two bonds of one thousand dollars each,

one due 1st March, 1864, & one due 1st March, 1865; and four bonds of five hundred dollars each, two due 1st March, 1864, & two due 1st March, 1865, with interest thereon.

To William M. Byrd, trustee, &c., for Byrd Allen, Benj. L. Allen, Sallie Allen, Louisa Allen, & Jane Allen, for three bonds, for one thousand dollars each, due, one on 1st March, 1864; one on 1st March, 1865; & one on 1st March, 1866, with interest thereon.

To Jane M. Lane, for three bonds for one thousand dollars each, due respectively on 1st days of March, 1864, 1865, & 1866; & six bonds of five hundred dollars each, two due 1st March, 1864; two on 1st March, 1865, & two on 1st March, 1866, with interest thereon.

To Fannie Binford, for three bonds for one thousand dollars each, due on the 1st days of March, 1864, 1865, & 1866, respectively, with interest thereon.

To Jonathan Orr, for three bonds for one thousand dollars each,
270 due on 1st days of March, 1864, 1865, & 1866, with interest thereon.

To William H. Walker, for four bonds, for one thousand dollars each, due on the first days of March, 1863, 1864, 1865, & 1866, respectively, with interest thereon.

And it is further ordered that a writ of mandamus issue accordingly; and that the defendants pay the costs of this suit in this behalf expended.

Writ of mandamus.

To the court of county commissioners of the county of Limestone, in the State of Alabama, composed of the Honorable John B. McClellan, judge of the court of probate; & James M. Lane, Henry W. Kimball, William A. Hine, & Luke G. Bullington, commissioners of the said county & State:

Whereas John D. Rather & others, who are severally & particularly named in & by their petition in writing, applied & complained to the judge of the circuit court of the county of Limestone, State of Alabama, at its spring term, held in Athens, in said county of Limestone, on the 4th Monday after the 4th Monday in March, 1868, that they, the said petitioners, were the holders & owners of certain of the county bonds of
the county of Limestone, State of Alabama, outstanding & un-
271 paid, said bonds being specifically mentioned & described, & by whom severally & respectively held & owned, & which said bonds, unpaid as aforesaid, (with others heretofore taken up & paid off,) were made & issued by the said county of Limestone, under & by virtue of an act of the general assembly of the State of Alabama, passed December 14th, 1855, in payment of its subscription, under said act, of two hundred thousand dollars, to the capital stock of the Tennessee & Alabama Central Railroad Company.

That said petitioners had applied to the said court of county commissioners, composed, as aforesaid, of the said McClellan, Lane, Kimball, Hine, & Bullington, & demanded of said court to assess & levy the tax, as by the said act of the general assembly of the State of Alabama, passed December, 14th, 1855, as aforesaid, authorized & required said court to do; said court of county commissioners aforesaid, then, & previous thereto, & since, refused to assess & levy any tax, or make any arrangements whatever to pay off said bonds, or any part thereof, as by

the said law directed & required. That said petitioners prayed the judge of said circuit court aforesaid, for a writ of mandamus, directed
the said court of county commissioners aforesaid, composed of the
272 said McClellan & others, as aforesaid, to assess & levy a tax, under the act of the general assembly aforesaid, for the payment of the outstanding & unpaid bonds aforesaid, and making said court of county commissioners, composed as aforesaid, a defendant to said petition, whereupon the relators of & in said petition, & the said court of county commissioners aforesaid, composed as aforesaid, by counsel on the part of said relators, and the said court of county commissioners, by their pleadings, agreement, & consent, in open court tendered, accepted, made up, & joined issue as to the issuance of a peremptory mandamus, by the said circuit court to the said court of county commissioners, commanding them to assess & levy a tax aforesaid, for the purpose of paying off said bonds; & for a more perfect understanding of this writ, reference is made to said pleadings & proceedings; and whereas the issue, so joined, coming on to be heard during the said term of said circuit court, the following further proceedings thereupon were had & done, viz:

JOHN D. RATHER ET ALS.
vs.
COMMISSIONERS' COURT OF LIMESTONE COUNTY, Alabama. } On motion docket.

And, now, to wit, on this 1st day of May, 1868, came the parties, by attorn*ies*, & this cause having come up for hearing at this term of the court, at Athens, Limestone County, State of Alabama, on the
273 issues joined, & was fully argued by counsel; whereupon the court, after due and mature consideration thereon had, do order & adjudge that judgment be entered upon the demurrer for the plaintiffs, overruling the same, & the defendants, declining to plead or answer further, it is ordered & adjudged that the defendants & their successors in office, be, & they are hereby, commanded forthwith to make full & ample provision for the payment of all outstanding unpaid bonds, now due, & the interest thereon, that may be due thereon when paid, which bonds were issued by the county of Limestone, in the State of Alabama, under & by virtue of the provisions of an act of the general assembly of the State of Alabama, passed December 14th, 1855, in payment of its subscription, under said act, of two hundred thousand dollars to the capital stock of the Tennessee & Alabama Central Railroad Company, according to the tenor & effect of said bonds, & the provisions of said act, by the assessment & collection of such taxes as may be necessary for that purpose, as follows:

To Edward W. Grigsby, for one bond, due 1st of March, 1863, for five hundred dollars; one bond, due 1st March, 1865, for five hundred dollars; & one bond, due 1st March, 1866, for one thousand dollars,
274 with the interest that may be due thereon.

To Thomas Redus, for three bonds, due the 1st of March, 1864, (two of said bonds for five hundred dollars each, & one for one thousand dollars;) and three other bonds, due the 1st March, 1865, (one for one thousand dollars, & two for five hundred dollars each;) and three other bonds, due the 1st March, 1866, (one for one thousand dollars, & two for five hun ired dollars each,) with the interest that may accrue thereon.

To Robert L. Bridgeforth, two bonds, due 1st March, 1864, for five hundred dollars each, & one other bond, due 1st March, 1866, for one thou-

sand dollars, with the interest that has or may accrue thereon. To J. B. Haney, for three bonds, for one thousand dollars each, one due 1st March, 1864, one due 1st March, 1865, & the other 1st March, 1866, with the interest which has & may accrue thereon. To J. B. Sims, for four bonds, for one thousand dollars each, due, respectively, on the 1st days of March, 1864, 1865, 1866, & 1867, with the interest that has & may accrue thereon.

To John B. Grigsby, for one bond, for one thousand dollars, due 1st March, 1863, with the interest that may be due or accrue thereon. To James Henderson, for two bonds, for five hundred dollars each, one due 1st March, 1863, & the other 1st March, 1867; & one for one
275 thousand dollars, due 1st March, 1864. To J. C. Orr, for six bonds, each due, respectively, two on 1st March, 1864, two on 1st March, 1865, & two on 1st March, 1866; & one for five hundred dollars, due on 1st March, 1867, with the interest thereon.

To Tanner & Newell, for five bonds, for one thousand dollars each, due, respectively, on the 1st days of March, 1863, 1864, two on 1st March 1865, & one on 1st March, 1866; & three bonds, for five hundred dollars each, due, respectively, on 1st days of March, 1865, 1866, & 1867, with interest thereon. To W. B. Newell, for four bonds, of one thousand dollars each, due, respectively, on the 1st days of March, 1863, 1864, 1865, & 1866. To Thomas S. Malone, for six bonds, of five hundred dollars each, due, one on 1st March, 1863, two on 1st March, 1864, two on 1st March, 1865, & one on 1st March, 1866, with interest thereon.

To Jonathan Fisher, for one bond, for one thousand dollars, due 1st March, 1866, with interest thereon.

To John D. Rather, for two bonds, of one thousand dollars each, one due 1st March, 1864, & one due 1st March, 1865; & four bonds, of five hundred dollars each, two due 1st March, 1864, & two due 1st March, 1865, with interest thereon.

To William M. Byrd, trustee, &c., for Byrd Allen, Benjamin L. Allen, Sallie Allen, Louisa Allen, & James Allen, for three bonds, for one thousand dollars each, due, one 1st March, 1864, one on 1st March, 1865,
276 & one on 1st March, 1866, with interest thereon.

To James M. Lane, for three bonds, for one thousand dollars each, due, respectively, on 1st days of March, 1864, 1865, & 1866; & six bonds, of five hundred dollars each, two due 1st March, 1864, two on 1st March, 1865, & two 1st March, 1866, with interest thereon.

To Fannie Binford, for three bonds, for one thousand dollars each, due on the 1st days of March, 1864, 1865, & 1866, respectively, with interest thereon. To Jonathan Orr, for three bonds, for one thousand dollars each, due on 1st days of March, 1864, 1865, & 1866, with interest thereon.

To William H. Walker, for four bonds, for one thousand dollars each, due on the 1st days of March, 1863, 1864, 1865, & 1866, respectively, with interest thereon.

And it is further ordered that a writ of mandamus issue accordingly, & that the defendants pay the costs of this suit in this behalf expended.

Therefore, being willing that due & speedy justice should be done to the owners & holders of the county bonds above named & described, do command you, the court of county commissioners of the county of Limestone, in the State of Alabama, composed of John B. McClelland, James M. Lane, Henry W. Kimball, William A. Hine, and Luke G. Bullington, & their successors in office, firmly enjoining you *you*
277 that, immediately after the receipt of this writ, you do, without

delay & forthwith, make full & ample provisions for the payment for all the outstanding unpaid bonds now due, & the interest thereon, that may be due *thereon* when paid; which said bonds, unpaid as aforesaid, were issued (with others, but since paid off) by the county of Limestone, in the State of Alabama, under & by virtue of an act of the general assembly of the State of Alabama, passed December the 14th, 1855, in payment of its subscription, under said act, of two hundred thousand dollars, to the capital stock of the Tennessee and Alabama Central Railroad Company, according to the tenor & effect of said bonds & the provisions of said act, by the assessment, levy, & collection of such taxes as may be necessary for that purpose; & which said bonds so outstanding & unpaid, being those above & heretofore enumerated, mentioned, & described in the judgment of the said circuit court overruling defendant's demurrer & awarding this writ. And that the same complaint may not, by your default, be again repeated to this court, & how you shall have executed this writ, make known to the next term of this court at the time & place of holding the same, then & there returning this writ, upon peril that may fall thereon.

Witness William B. Wood, judge of the 4th judicial circuit of
278 the State of Alabama, at Athens, Limestone County, State of Alabama, this 2nd day of June, 1868.

J. A. MOORE,
Circuit Court Limestone County, State of Alabama.

Sheriff's return & endorsement.

I, Gulielimus Wood, coroner of the county of Limestone, in the State of Alabama, and the acting sheriff in & for said county, hereby return, & make known to the circuit court at the said county of Limestone, that the writ of mandamas, which issued on the 2nd day of June, 1868, by said court, against John B. McClellan, Henry W. Kimball, James M. Lane, William A. Hine, & Luke G. Bullington, in the matter pending in said court, between John D. Rather & others, against the said McClellan, Kimball, Lane, Hine, & Bullington, was by me, as the coroner & the acting sheriff aforesaid, served & executed upon the said McClellan, Lane, Kimball, Hine, & Bullington, by reading to the said Kimball, Lane, Hine, & Bullington, each & severally, the original writ of mandamus, & delivering to each of them, respectively, a duplicate & exact copy of said original writ of mandamus; & on the said John B. McClellan, by delivering to him the original writ of mandamus in my hands to be served. All done on the 8th day of August,
279 1868; and I now & hereby make return of the service of said writ of mandamus, by returning to said court this, a duplicate & exact copy of the said original writ, with the foregoing, as the service & return of said writ of mandamas.

This 15th day of August, 1868.

G. WOOD,
Coroner & Acting Sheriff of the County of Limestone, State of Alabama.

Notice of appeal.

THE STATE OF ALABAMA,
Limestone County:

To any sheriff of the State of Alabama, greeting:

Because, in the records & proceedings, and also in the giving of judgment, in a suit which was in our circuit court in & for said county, be-

fore the judge thereof, between John D. Rather et als., plaintiffs, & the commissioners' court of Limestone County, defendants, manifest error hath intervened, to the great damage of the said commissioners' court as aforesaid, as we are informed, & the records & proceedings of which said judgment we have caused to be brought before the judges of our supreme court of Alabama, for certain cause of error: And we, being willing that error, if any there be, should in due manner be corrected, & full & speedy justice done to the parties aforesaid, as is just, command you that you summon the said John D. Rather et als.,
280 plaintiffs, that they be & appear before the judges of our said supreme court, to be held at the usual place of holding the same, in the city of Montgomery, in the State of Alabama, on the first Monday in January next, to hear the records & proceedings aforesaid, if it shall seem expedient; and, further, to do, & receive what our said supreme court, before the judges thereof, shall consider of the said John D. Rather et als., in this behalf.

Witness my hand, at office in Athens, this, the 18th day of August, 1868.

J. A. MOORE, *Clerk.*

Sheriff's return.

Executed on J. N. Malone, W'm H. Walker, Luke Pryor, & Houston, attorneys.

August 18th, 1868.

G. WOOD.
Acting Sheriff.

Approved bond.

We, James L. Coman, & Charles W. Raisler, both of the county of Limestone, Alabama, acknowledge ourselves the security of the court of county commissioners of the county of Limestone, State of Alabama, for the costs of an appeal to the supreme court from a judgment rendered against said court of county commissioners, in the circuit court of the county of Limestone, State of Alabama, on the first day of May, 1868, in favor of John D. Rather & others, petitioners.

In witness whereof, we hereunto set our hands & seals, Nov. 24th, 1868.

J. L. COMAN. [SEAL.]
CHARLES W. RAISLER. [SEAL.]

Approved:

J. A. MOORE, *Clerk.*

281 *Certificate of appeal.*

THE STATE OF ALABAMA,
Limestone County:

I, Joseph A. Moore, clerk of the circuit court of Limestone County, State of Alabama, hereby certify that, from the judgment of the circuit court of said county, rendered on the 1st day of May, 1868, in favor of John B. Rather et als., plaintiffs, & against the court of county commissioners of said county of Limestone, defendants, the defendants have taken an appeal to the next term of the supreme court of the State of Alabama.

Witness my hand, this 24th day of November, 1868.

J. A. MOORE, *Clerk.*

Judgment of supreme court.

The State of Alabama to the clerk of the circuit court of Limestone County, greeting:

Whereas the record & proceedings of said court, in a certain cause lately pending therein, wherein John D. Rather et als., were pl'ffs, and the commissioners' court of Limestone County were defendants, wherein by said court, at spring term, 1868, it was considered that a writ of mandamus issue in favor of the said John D. Rather & others, against the said commissioners' court of Limestone County, the nature of which writ will more fully appear in the records of said cause, were brought before our supreme court, by appeal, taken
282 pursuant to law, on behalf of said commissioners' court of Limestone County:

Now it is hereby certified that it was thereupon considered, by our supreme court, on the 9th day of January, 1869, that said appeal be dismissed, & that the said John D. Rather & others, as appellees, recover of the said commissioners' court of Limestone County, as appellants, & J. L. Coman and Charles W. Raisler, securities, the costs on said appeal in said supreme court, and in the court below.

Witness D. B. Booth, clerk of said supreme court, the 12th day of January, 1869.

D. B. BOOTH, *Clerk.*

THE STATE OF ALABAMA,
Limestone County:

I, Joseph A. Moore, clerk of the circuit court of said county, hereby certify that the foregoing transcript is a full & complete transcript of the records & proceedings, (in the matter of the petition of John D. Rather et als., for writ of mandamus against the court of county commissioners of the county of Limestone, in the State of Alabama,) in the circuit court of said county of Limestone, as taken from the records of said court.

In testimony whereof I hereunto subscribe my name & affix my official seal. Done at office, this 20th day of November, 1871.

[SEAL.] J. A. MOORE, *Clerk.*

[One dollar stamp.]

(Endorsed:) Filed in clerk's office, U. S. district court, northern district of Alabama, Nov'r 22d, 1871. Lionel W. Day, clerk D. C.

283 *Decree.*

District court of the United States, northern district of Alabama. November term, 1871.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR RAILROAD COMPANY.

This cause was submitted at the present term of this court for decree on pleadings and proof, and, after due consideration, it is ordered, adjudged, and decreed that the demurrer and pleas of the defendant The Nashville & Decatur Railroad Company, to complainant's original bill, be, and the same are, severally overruled.

It is ordered, adjudged, and decreed that it be referred to Lionel W. Day, esq., standing master in chancery of this court, to take and state an account of the principal and interest due to the complainant on the bonds of the county of Limestone, mentioned and described in the original bill, and therewith exhibited, and that he report the same to this court as early as practicable.

November 24th, 1871.

RICHARD BUSTEED, *Judge, &c.*

(Endorsed:) Filed November 24th, 1871. Lionel W. Day, clerk D. C.

284 *Report of master.*

In the district court of the United States northern district of Alabama.

JOHN C. ORR, COMPLAINANT,
vs.
THE COUNTY OF LIMESTONE AND THE NASHville & Decatur Railroad Company, defendants. } In chancery.

To the Honorable Richard Busteed, judge of said court:

In pursuance of a decretal order made and entered in this cause, and bearing date on the 24th day of November, 1871, at a stated term of this court, held in the city of Huntsville, in said district, by which it was referred to Lionel W. Day, standing master in chancery in this court, to take and state an account of the principal and interest due to the complainant on the bonds of the county of Limestone, mentioned and described in complainant's bill, and therewith exhibited, being (7) seven in number, and designated as numbers 104, 105, 110, 111, 129, 130, and 138, respectively:

I, Lionel W. Day, standing master in said court, do respectfully report that I have proceeded to investigate the matters so referred to me, and that, after taking due proof, I find and report that there appears to be due and unpaid of the principal of said-mentioned bonds, the sum of six thousand five hundred and six $\frac{66}{100}$ dollars, ($6,506.66,) and the further sum of three thousand four hundred & twenty $\frac{47}{100}$ dol-
285 lars, ($3,420.47,) the amount of the interest thereon to date hereof. The defendant The Nashville & Decatur Railroad Company objects to the interest allowed herein, as shown in his exceptions to this report on file, and said objections are overruled by me.

I do therefore respectfully report that said defendant should be decreed to pay the said complainant the sum of nine thousand nine hundred & twenty-seven $\frac{13}{100}$ ($9,927.13) dollars.

I respectfully refer to Schedule A B, hereto annexed, as making a part of this my report.

Respectfully submitted.

LIONEL W. DAY,
Master in Chancery.

Dated Nov. 24, 1871.

286 *The Nashville & Decatur Railroad Company to John C. Orr, Dr.*

To	principal on bonds No. 104 & 105, @ 1,000....	2,000 00
"	int. 7 years, 8 mos., & 24 days, @ 7%.....	1,237 32
"	principal on bonds No. 110 & 111, @ $1,000..	2,000 00

" int. thereon 6 years, 8 mos., & 24 days, @ 7%.			1,077 32
" principal on bonds No. 129 & 130, @ $1,000..			2,000 00
" int. thereon 5 years, 8 mos., and 24 days, @ 7%.			917 26
" principal on bond No. 138.....	1,000		
" int. to	6 66		
	$1,006 66		
By credit, cash paid April 1, 1867.....	500		
Dr.....	$506 66		506 66
To int. thereon 4 years, 7 mos., and 24 days, @ 7%.			188 57
Total principal.....			$6,506 66
" interest.....			$3,420 47
			$9,927 13

(Endorsed:) "Schedule A B." Filed Nov'r 24, 1871. Lionel W. Day, clerk D. C.

287 *Exceptions to master's report.*

In the district court of the United States for the northern district of Alabama.

JOHN C. ORR, COMPLAINANT,
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY and Limestone County, defendants. } In chancery.

Exceptions taken by the defendant the Nashville & Decatur Railroad Company, to the report made by Lionel W. Day, the master in chancery of this honorable court, made on the 24th day of November, 1871, concerning the debt, and the amount thereof due from said defendant, the exceptant, to complainant.

EXCEPTION 1ST. The said exceptant' say that the said master in chancery by his said report, hath certified or stated that said exceptant was, on the day of his report, indebted to complainant in the sum of $9,927.13, principal and interest, when in fact, exceptant was not indebted to complainant in said sum.

EXCEPTION 2ND. Exceptant further says that *that* said master in chancery has, by his report, certified or stated that he had allowed complainant interest on his said bonds, to the amount of $3,420.47. when in fact complainant was not entitled to any interest on said bonds, but if entitled to any, not to the amount so allowed.

EXCEPTION 3RD. Exceptant further says that said master in chancery hath, by his said report, and the schedule thereto attached,
288 certified or stated, that he had allowed complainant interest at 7 per cent. on the two of his said bonds numbered 104 and 105, for seven years eight months and 24 days, amounting to $1,237.32. He should not have allowed said sum, for in fact, said bonds did not, under the 8th section of the act of the legislature of the 14th of December, 1855, under which they were executed and issued, bear interest, unless by default of said Limestone County they shall not be paid when presented at maturity. And exceptant says the proof failed to show that said bonds were presented at maturity, and default was made in the payment. But if the proof shows such presentation, it does not show

that it was made 7 years 8 months and 24 days before the date of said report.

EXCEPTION 4TH. Exceptant further says that said master in chancery hath, by his said report and the schedule thereto attached, certified or stated that he had allowed complainants interest on the two of his said bonds, numbered 110 & 111, for 6 years 8 months and 24 days, at 7 per cent. amounting to the sum of $1,077.82. Said master should not have allowed said sum for interest, because he says said bonds did not, under the 8th section of the act of the legislature of Alabama of the 14th of December, 1855, under which they were executed and issued, bear
289 interest, unless by default of said Limestone County they shall not be paid when presented at maturity. And exceptant says that the proof fails to show that said bonds were presented and default in the payment thereof made by said county. But if it does show a presentation and default, it does not show that they were made 6 years 8 months and 24 days before the date of his said report.

5TH EXCEPTION. Exceptant further saith that said master in chancery hath, by his said report, and schedule thereto attached, certified or stated that he had allowed complainant interest on the two other of his said bonds, numbered 129 & 130, at the rate of 7 per cent. for five years eight months and twenty-four days, amounting to the sum of $917.26. And exceptant says said master ought not to have allowed said sum as interest, because he says that said bonds did not, under the 8th section of the act of the legislature of 14th of December, 1855, under which they were executed and issued, bear interest, unless by default of Limestone County they shall not be paid when presented at maturity. And defendant says, that the proof fails to show that said bonds were presented, and default in the payment made by said county. But if the proof shows such presentation and default, it does not show that they were made 5 years 8 months and 24 days before the date of the master's said report.

290 6TH EXCEPTION. Exceptant further saith that said master in chancery hath, by his said report and schedule thereto attached, certified or stated that he had allowed complainant interest at the rate of 7 per cent, on the one of his said bonds numbered 128, for five years 8 months and 24 days, amounting to the sum of $188.57. And defendant says said master ought not to have allowed said sum, because he says said bond did not, under the 8th section of the act of the legislature of Alabama, of the 14th of December, 1855, under which it was executed and issued, bear interest, unless by default of said Limestone County it should not be paid on presentation at maturity. And defendant says that the proof does not show that said bond was presented, and default in payment thereof made by said county. But if the proof does show a presentation and default, it fails to show that such presentation and default was made 5 years 8 months and 24 days before the date of said report. And because it is shown by the proof, that said bond did not mature & fall due 5 years 8 months and 24 days before the date of said report.

And therefore said exceptant the Nashville & Decatur Railroad Company, doth in each and all of said particulars, above specified and set forth, except to said master's report, and prays that the same
291 may be set aside and held for nought, and that the true amount of the debt due from defendant to the complainant may be ascertained.

HOUSTON AND PRYOR,
ROBINSON & WALKER,
Counsel for said Defendant and Exceptant.

(Endorsed:) Filed in clerk's office the 24th day of November, 1871. Lionel W. Day, clerk D. C.

292 *Final decree.*

District court of the United States, northern district of Alabama. November term, 1871.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR Railroad Co.

This cause came on to be further heard on the pleadings, proofs, and report of Lionel W. Day, esq., the standing master in chancery of this court, stating an account of the principal and interest now due to the complainant on the bonds of the county of Limestone, in the original bill mentioned and described as held and owned by complainant, and the exceptions of the defendant The Nashville and Decatur Railroad Co., and after due consideration—

It is ordered, adjudged, and decreed, that said exceptions be overruled and said report be in all things confirmed.

It is further ordered, adjudged, and decreed, that, unless the defendant the Nashville & Decatur Railroad Company, within thirty days from the date of this decree, pay to the complainant the sum of $9,927.13, reported by the master aforesaid, as due and owing on the bonds aforesaid, and further pays the cost of this suit, to be taxed by the clerk, then the equity of redemption of said defendant the Nashville & Decatur Railroad Company, to the property, real and personal, conveyed by the mortgage, executed by the Tennessee and Alabama Central Railroad Company, on the 29th day of July, 1858, to secure the payment of the said bonds, is forever barred, and the said mort-

293 gage is hereby foreclosed; and the said Lionel W. Day, esq., standing master in chancery, as aforesaid, is hereby ordered and directed to take possession of the said estate, real and personal, and, after having given forty days' notice, by advertisement in a public newspaper, printed in the city of Huntsville, in this district, and in a public newspaper, printed in the town of Athens, in this district, will proceed to sell to the highest bidder, for cash, at the court-house door, in the town of Athens, in the county of Limestone, in this district, the said property, real and personal, and the proceeds of sale he will bring into this court, subject to the future and further orders of this court, and will report his action under this decree to the next term of this court.

November 25th, 1871.

RICHARD BUSTEED.

(Endorsed:) Filed November 25th, 1871. Lionel W. Day, clerk D. C.

294 *Minute entries.*

In the district court of the United States for the southern district of Alabama. In chancery.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE, NASHVILLE & DECATUR Railroal Company.

On this 22d day of November, 1871, in this cause, by agreement of

counsel on file, and by leave of the court, the defendant The Nashville & Decatur Railroad Company, has leave to file an additional plea without prejudice to or waiving the demurrer of said defendant heretofore filed, and said defendant has also leave to file an amended answer without prejudice to or waiver of said defendant's demurrer or pleas, and said additional plea and amended answer are accordingly filed in open court.

And it is ordered, that said additional plea shall not prejudice or be a waiver of said demurrer, and said amended answer shall not prejudice or be a waiver of said demurrer or either of said defendant's pleas.

JOHN C. ORR
vs.
COUNTY OF LIMESTONE & NASHVILLE & DECATUR RAILROAD COMPANY.

On this 23d day of November, 1871, in this cause, the demurrer of the defendant The Nashville & Decatur Railroad Company to complainant's bill, being set down for hearing, and being now heard and considered, it is ordered that the same be overruled.

295 JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY & COUNTY OF LIMESTONE.

On this 23d day of November, 1871, in this cause, the two pleas of the defendant the Nashville and Decatur R. R. Co., being set down for hearing, came on to be heard; and, after being duly considered, it is ordered that each of said pleas be overruled.

JOHN C. ORR
vs.
THE NASHVILLE & DECATUR RAILROAD COMPANY & COUNTY OF LIMESTONE.

On this 24th day of November, 1871, on the hearing of this cause, the complainant offered in evidence the bonds of the county of Limestone, described in complainant's bill, with the endorsement thereon; the acts of the legislatures of Alabama & Tennessee, mentioned in said bill; certified copy from the court of probate of Limestone County, Alabama, of the mortgage alleged in the bill; the depositions of James W. Sloss, Jno. T. Tanner, A. C. Legg, John B. McClellan, W'm W. Phillips, Thomas Reedus, Joshua P. Coman, and an agreement of counsel as to facts. When the complainant offered in evidence the said certified copy of said alleged mortgage, the defendant The Nashville & Decatur R. R. Co., objected to the same, on the ground, that it was secondary evidence, and that no sufficient predicate was laid for the introduction of the same; which objection the court overruled, and said defendant excepted.

The complainant also offered in evidence a transcript from the circuit court of Limestone Co., Alabama, which defendant ob-
296 jected to, and the objection was sustained.

The defendant the Nashville & Decatur R. R. Co. offered in evidence the several exhibits to the answer, the deposition of Luke

Pryor, a transcript of a decree of the chancery court of Limestone Co., Alabama, and a transcript of a record of the commissioner's court of Limestone Co., Alabama.

The complainant objected to certain portions of the deposition of Luke Pryor, indicated by marks around the same; which objection the court sustained, and excluded said parts of said deposition; and said defendant excepted thereto.

The complainant also objected to said transcripts of said chancery-decree, and from the commissioner's court of Limestone Co.; and said objections are sustained, and said transcripts excluded.

It is ordered that the evidence offered and excluded, as well as that admitted, be filed and made a part of the record, and that, in the event of an appeal, the clerk embody the same in the transcript, and certify what portions of said deposition of said Luke Pryor were objected to and excluded.

JOHN C. ORR
vs.
NASHVILLE & DECATUR RAILROAD COMPANY & County of Limestone.

On this 24th day of November, 1871, in this cause, the defendant the Nashville & Decatur Railroad Co., by counsel, file their exceptions to the report of the master in chancery in the matter of the accounting herein.

Ordered that the same be filed and made of record herein.

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JOHN C. ORR
vs.
NASHVILLE & DECATUR RAILROAD COMPANY & County of Limestone.

On this 25th day of November, 1871, comes the defendant the Nashville & Decatur Railroad Company, in open court, and prays an appeal to the Supreme Court of the United States.

Whereupon it is ordered that the said appeal be allowed, and, thereupon the said defendant presents an appeal-bond, and said bond is filed and approved by the court. Thereupon, it is ordered that the execution of the final decree herein be suspended.

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Appeal-bond.

In the district court of the United States for the northern district of Alabama.

JOHN C. ORR, COMPLAINANT,
vs.
THE COUNTY OF LIMESTONE, IN THE STATE OF Alabama, and the Nashville & Decatur Railroad Company, defendants. } In equity.

Know all men by these presents that we, James W. Sloss, James I. Donegan, are held and firmly bound unto John C. Orr, in the sum of twenty thousand dollars, to be paid to the said John C. Orr, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our & each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals this 25th day of November, 1871.

Whereas the above-named Nashville & Decatur Railroad Company hath prayed and obtained an appeal to the Supreme Court of the United States from the final decree rendered in the above-entitled cause, by the district court of the United States for the northern district of Alabama, at the present term of said court, to wit, at the fall term thereof, 1871: Now, therefore, the condition of this obligation is such, that if the above-named Nashville & Decatur Railroad Company shall prosecute said appeal to effect, and answer all costs and damages,
299 if said Nashville & Decatur Railroad Company shall fail to make good said appeal, then this obligation shall be void; otherwise to remain in full force.

JAMES W. SLOSS. [SEAL.]
JAMES I. DONEGAN. [SEAL.]

I approve of the form and sufficiency of this bond. Nov'r 25th, 1871.
RICHARD BUSTEED, *Judge, &c.*

(Endorsed:) Filed Nov'r 25th, 1871. Lionel W. Day, clerk D. C.

300 The United States of America, northern district of Alabama.

I, Lionel W. Day, clerk of the district court for said district, hereby certify that the foregoing is a correct transcript of the files of record in said court, and of the minutes of the court in said cause.

I further certify that the portions of the deposition of Luke Pryor, esq., taken for defendant, & embraced in red brackets or lines was, by the court excluded from the proof herein, on objections made by complainant.

Witness my hand & the seal of said district court, at Huntsville, in said district, this the 19th day of December, A. D. 1871.

[SEAL.] Attest: LIONEL W. DAY, *Clk D. C.*

(Indorsement on cover:) No. 334. The Nashville and Decatur Railroad Company, appellant, vs. John C. Orr. M. Alabama D. C. U. S. Filed 19th January, 1872.

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